SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No.

PAUL KNAUER, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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[fol. 3]

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, Plaintiff,

vs.

PAUL KNAUER, Defendant

COMPLAINT—Filed February 3, 1943

The United States of America, by E. J. Koelzer, Assistant United States Attorney for the Eastern District of Wisconsin, herewith presents its complaint under and pursuant to Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (U. S. Code, Title 8, Sec. 738) against Paul Knauer and respectfully represents:

1. That the said Paul Knauer was, prior to the 13th day of April, 1937, a native and citizen of Germany.

2. That the said Paul Knauer entered the United States on the 7th day of April, 1925, and now resides at 2611 West Lisbon Avenue, Milwaukee, Wisconsin, within the Eastern District of Wisconsin, and within the jurisdiction of this Court.

3. That on the 20th day of November, 1936, the said Paul Knauer filed his petition for naturalization, Number 30972, in the Circuit Court of Milwaukee County, Milwaukee, Wisconsin, in which said petition for naturalization the said Paul Knauer represented and set forth under oath as required by law among other things as follows:

[fol. 4] "I am attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the German Reich, of whom (which) at this time I am a subject (or citizen), and it is my intention to reside permanently in the United States."

4. That thereafter on to-wit, the 13th day of April, 1937, the said Paul Knauer took the following oath of allegiance in open court as required by law:

> "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the German Reich of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature."

5. On the same date, to-wit, the 13th day of April, 1937, the said Circuit Court of Milwaukee County, Milwaukee, Wisconsin, relying on the truth and good faith of the representations made by the said Paul Knauer in his petition for naturalization and in his oath of allegiance, entered its order admitting him to citizenship in the United States and thereupon certificate of naturalization Number 4188490 was issued to him by the Clerk of said Court.

6. That all of the representations aforesaid made by the said Paul Knauer in his petition for naturalization were false and fraudulent in that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years [fol. 5] prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich of which he was then a subject but in fact intended to retain allegiance and fidelity to the said the German Reich; and in that he did not in fact intend to reside permanently in the United States.

7. That all of the representations aforesaid made by the said Paul Knauer in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said the German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies, foreign and domestic; and in that he did not in fact intend to bear true faith and allegiance to the same,

but in fact did intend to remain a subject of the German Reich and to maintain his allegiance thereto.

8. That the said certificate of naturalization was procured by the said Paul Knauer fraudulently and illegally and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof, and that said certificate of naturalization is subject to cancellation.

Wherefore, Your plaintiff prays:

That an order be entered by this Honorable Court revoking and setting aside the aforesaid order of admission to citizenship, cancelling the said certificate of naturalization and directing the surrender of said certificate of naturalization to the Clerk of this Court; and that the defendant be [fol. 6] forever restrained and enjoined from claiming any rights, privileges, benefits or advantages whatsoever under said order of admission to citizenship and said certificate of naturalization; that a certified copy of such order be mailed to the Commissioner of Immigration and Naturalization of the Department of Justice and to the Clerk of the Circuit Court of Milwaukee County, Milwaukee, Wisconsin; that an order be entered by this Honorable Court granting that its process be directed to the said defendant, commanding him to answer this complaint within sixty days after he is served with notice thereof; and, if said defendant cannot be found within the jurisdiction of this Honorable Court, that service may be had on said defendant by publication; and that this Honorable Court may grant such other and further relief as may be just and proper in the premises.

E. J. Koelzer, Assistant United States Attorney for the Eastern District of Wisconsin, Room 358, Federal Building, Milwaukee, Wisconsin.

[fol. 7] In United States District Court

[Title omitted]

Order—Filed February 3, 1943

Upon the complaint of the United States of America, this day filed herein, and upon motion of E. J. Koelzer, Assistant United States Attorney for said District, made this date, it appearing now that this order should be made,

It Is Ordered that Paul Knauer be, and he hereby is, ordered and required to answer the complaint of the United States of America, at the United States District Court room in the City of Milwaukee, State of Wisconsin, within sixty days after service upon him personally of a copy of said complaint, omitting the certificates thereto attached, together with a copy of this order; and the United States Marshal for said district is ordered to forthwith serve a copy of said complaint, omitting the certificates thereto attached, and a copy of this order upon said defendant personally if he is to be found in this district.

Dated this 3rd day of February, 1943.

(Sig.) F. Ryan Duffy, Judge.

[File endorsement omitted.]

[fol. 8] IN UNITED STATES DISTRICT COURT

ANSWER—Filed April 1, 1943

PAUL KNAUER, represented by himself, herewith presents his answer to the complaint filed by the United States of America, by E. J. Koelzer, Assistant United States Attorney for the Eastern District of Wisconsin against Paul Knauer and respectfully submits:

1. That the said Paul Knauer concedes the facts, statements and allegations made and described in paragraphs 1 to 5 of the complaint.

2. That the said Paul Knauer most emphatically denies every single allegation made in paragraphs 6 to 8 of the complaint, that pretexts have been invoked which are justified by nothing and that intentions are attributed to him which never have been manifested by acts or words.

3. That the said Paul Knauer in accordance with his petition for naturalization always respected and always was attached to the principles of the Constitution of the United States in their entirety, to the American Flag and to the Republic for which it stands, that he was well inclined and well disposed to the good order and happiness of the United States and

That, since his arrival in the United States, he only joined organizations which stated as their foremost business

and purpose to maintain, support and uphold the Constitution of the United States in its integrity and preserve all rights unabridged which the Constitution of the United States guarantees to its citizens and to the people of this nation, and

That the said Paul Knauer, after filing his petition has [fol. 9] apparently been investigated by various government agencies as to his character and beliefs comprising at least the time from his arrival in 1925 to the day of his admittance to citizenship in 1937,

that the said Paul Knauer has been examined by a government examiner as to his knowledge and beliefs as to the American form of government and,

that the said Paul Knauer had called two competent witnesses for verification of his character, his qualification for citizenship and his beliefs, and

that the character, conduct and belief of the said Paul Knauer were found to be beyond reproach and in full accord with his statements and declarations made in his petition.

4. That in accordance with his petition for naturalization the said Paul Knauer had positively and definitely intended to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to the German Reich of which at that time he was a citizen.

5. That in accordance with his petition for naturalization it was positively and definitely his intention to reside permanently in the United States of America and that he never acted nor made a single statement to the contrary.

6. That he swore with a clear conscience and without any mental reservation or purpose of evasion whatsoever to renounce and abjure all allegiance and fidelity to the German Reich, of which he had heretofore been a citizen.

7. That he swore with a clear conscience and without any [fol. 10] mental reservation or purpose of evasion whatsoever to support and defend his newly adopted homeland and to uphold, support and defend its Constitution in its integrity and the laws of the United States of America against all enemies, foreign and domestic, and to preserve all rights unabridged which the Constitution of the United States guarantees to its citizens and to the people of the nation.

8. That his oath did not contain any obligation to acquire a dual nationality and to become a citizen of Great Britain, Russia or China and to share the political views of these countries.

9. That his oath did not contain an obligation to participate actively in denouncing and insulting his mother country.

10. That his oath did not obligate him to hate his parents, relatives and friends because of their German ancestry, and to avoid any future social contact with them.

11. That his oath did not state that he may have to commit matricide eventually in order to fulfill his obligation.

12. That his oath did not forbid him to help to relieve the human suffering, if any, of his kinfolks and friends and of the German people in general and to show sympathy for their misery and misfortune, if any.

13. That his oath did not obligate him to hate the German people or to deny respect for and admiration of the German people, its technical progress, its scientific and cultural achievements, and it did not obligate him to hide and conceal his pride in his German ancestry.

14. That his oath allowed him to organize German Americans for the purpose of fostering German culture, culti- [fol. 11] vating the German language and studying German American history and to fight in a legal way for recognition of the beneficial influence of German Americans as to the development of this country and for the recognition of their achievements as history has accorded it to them.

15. That his oath allowed him to criticize any attempt to minimize the beneficial influence of the German American influx into this country and to criticize any campaign for the purpose of falsifying or blackening the history, record and achievements of the German American element in this country.

16. That his oath allowed him to show admiration and respect to any great man in history, especially if of German descent, if he excels in the field of science, culture, finance, economics or politics.

17. That his oath did not forbid him to convey any truthful information as to the actual happenings in his mother country and to criticize and correct erroneous or falsified reports.

18. That he did not commit a single illegal act, though alleged, to obtain his naturalization papers.

19. That he did not make a single utterance or statement to shirk his duties nor did he commit any act to this effect.

20. That the said Paul Knauer positively and definitely did not acquire his certificate of naturalization fraudulently and falsely as alleged.

21. That in accordance with his oath the dominant motive in all his actions, in all his thoughts, words and deeds was the welfare of the American people, that he positively [fol. 12] and definitely intended to bear true faith and allegiance to the people, the Constitution and laws of the United States of America and that he positively and definitely did not intend to remain a citizen of the German Reich.

22. That this action is in violation of the 14th amendment of our Constitution which provides that all persons of the United States of America, born or naturalized, are entitled to equal privileges and immunities,

that there is no decision in the history of the United States upholding the idea that citizenship is a thing of degrees,

that to penalize American citizens for their ancestry is contrary to the fundamental concepts of our Constitution.

23. That this action demands revocation of citizenship of the defendant and restraining and enjoining the said Paul Knauer from claiming any rights, privileges, benefits or advantages he is entitled to as citizen,

that these demands if complied with mean subsequent confinement of the said Paul Knauer,

that the cancellation of citizenship together with subsequent confinement constitute criminal punishment,

that the Nationality Act of 1940 should be held to be a criminal statute and the requested criminal punishment should be preceded by conviction after a jury trial (Wong Wing vs. U. S. 163 U. S. 228).

that this action will constitute a violation of the 7th Amendment of the Constitution of the United States, if a trial by jury should not be conceded to the said Paul [fol. 13] Knauer.

24. That this action disregards the 8th amendment of the Constitution of the United States which forbids "cruel and unusual punishment."

25. That the Nationality Act of 1940 is an ex post facto law and a mere colorable device for unjustly and arbitrarily depriving the said Paul Knauer of his citizenship, that this act though it appears to mollify the rigor of criminal law, actually increases the punishment for the purpose of conviction, (Calder vs. Bull, 3 Dallas, 386)

that another court decision (Thompson vs. Utah, 170 U. S. 343, 351, 353) considers a penal statute ex post facto "which by its necessary operation and in its relations to the offense or its consequences, alters the situation of the accused to his disadvantage,"

that the U. S. Constitution, Art. I, section 9, par. 3, prohibits the U. S. from passing any ex post facto laws.

26. That the acts alleged by the plaintiff preceded the Nationality Act of 1940, under and pursuant to which the complaint has been presented and that in a decision Federal Judge Jesse C. Adkins of March 5th, 1943 agreed that "Congress did not attempt to make prior acts criminal and should not have attempted to do so."

27. That the administrative act of Attorney General F. Biddle declaring this action a civil one and depriving the said Paul Knauer of a jury trial, is in violation of the due process clause of the 5th amendment of the Constitution of the United States.

28. That a serious case of misbehaviour on the part of a government agency has arisen in connection with the [fol. 14] publicity of this action for denaturalization in various newspapers on or about Feb. 3, 1943, the purpose and effect of which could have been only to arouse passion and prejudice, cause economic distress and suffering and create a hostile feeling against the defendant, thus prejudicing the right of the said Paul Knauer to a fair trial and constituting a violation of the due process clause of the 5th amendment of the Constitution of the United States.

29. That no concrete proof of fraud or disloyalty at the time or prior to or after naturalization has been presented by plaintiff.

30. That our President of the United States has vetoed legislation which would have deprived of citizenship any persons found guilty of actually making false statements in connection with government contracts, that in a message he stated to the House, that "under this bill, if enacted, citizenship may be lost as the result of a misdemeanor," that "the extreme nature of this sanction not only constitutes a bad precedent, but does violence to our democratic concepts of fair and reasonable punishment for a particular crime."

31. That a decision of the Circuit Court of Milwaukee on Oct. 4, 1938 and the comment of the presiding Judge in connection with a mandamus action of Paul Knauer vs. Auditorium Board were in every respect favorable to the said Paul Knauer.

32. That this action is part of a determined, challenging, well planned program to smear German Americans for the sympathy they have shown toward their kinfolks, and to [fol. 15] discredit them in the minds of the American public with the unfortunate result of dividing the war efforts between conducting the war and creating a hostile home front by mudslinging and violent presumptions.

33. That this action is part of an organized effort to frighten and punish every American of German descent who, during the years of public debate, held views opposed to the apparent policy of the present administration, that it appears that these men are to be sent into exile, not because of what they have done when a united national effort was required, but for expressions and opinions, if any, during a period of national discussions.

34. That the said Paul Knauer has done his utmost to clear himself and to protect his family against one of the most violent and vicious smear campaigns on the part of certain newspapers directed against him as former spokesman of a German American organization chartered under the State Laws of Wisconsin, and that he has asked for a Federal Grand Jury Investigation and also a Congres-

sional Investigation into the German American situation in Milwaukee.

Wherefore, Your defendant prays:

That an order be entered by this Honorable Court dismissing this action and that this Honorable Court may grant such other and further relief as may be just and proper in the subject matter.

(Sgd.) Paul Knauer.

[File endorsement omitted.]

[fol. 16] In United States District Court

Civil Action Nos. 955, 831, 948, 960, 965, 952, 959, 963, 967, 949, 954, 955, 966, 961

United States of America, Plaintiff,

v.

Paul Knauer, Hans Behnke, John Fred Falk, Herbert Ernst Poetzsch, Ewald Schneider, Karl Kalusok, Henry Charles Pfaff, Emil Schellong, Joseph Wippl, William Carl Greeb, Otto Kettner, Erich Emil Kaufmann, Ludwig Soellner, Helmut E. Prause, Defendants

Notice of Motion—Filed May 12, 1943

Sir:

Please take notice that the undersigned will bring the annexed motion on for hearing before the United States District Court for the Eastern District of Wisconsin, presided over by F. Ryan Duffy, District Judge, on the 17th day of May, 1943, at 10:00 in the forenoon of said day, or as soon thereafter as the matter may be reached for hearing.

Dated at Milwaukee, Wisconsin, this 11th day of May, 1943.

B. J. Husting, United States Attorney, By Carl R. Becker, Assistant United States Attorney, By F. Kirk Maddrix, Special Assistant to the Attorney General.

[fol. 17] To:

Paul Knauer, in person, 2611 West Lisbon Avenue, Milwaukee, Wisconsin.

Homer Clark, Esq., 108 W. Wells Street, Milwaukee, Wisconsin, Attorney for Hans Behnke.

Julius O. Roehl, Esq., First Wis. National Bank Bldg., Milwaukee, Wisconsin, Attorney for John Fred Falk.

H. A. Sawyer, Esq., 621 Century Building, Milwaukee, Wisconsin, Attorney for Herbert Ernst Poetzsch.

Val Dittmann, Esq., 618—56th Street, Kenosha, Wisconsin, Attorney for Ewald Schneider.

A. W. Richter, Esq., 510 Caswell Building, Milwaukee, Wisconsin, Attorney for Karl Kalusek.

H. William Ihrig, Esq., 759 North Milwaukee Street, Milwaukee, Wisconsin, Attorney for Henry Charles Pfaff.

Erwin E. Fritz, Esq., 1937 West Fond du Lac Avenue, Milwaukee, Wisconsin, Attorney for Emil Schellong.

Cain & Farley, Esqs., 135 West Wells Street, Milwaukee, Wisconsin, Attorneys for Joseph Wippl.

L. A. Buckley, Esq., Hartford, Wisconsin, Attorney for William Carl Greeb.

Otto Kettner, in person, 127 East Vine Street, Milwaukee, Wisconsin.

H. William Ihrig, Esq., 759 North Milwaukee Street, Milwaukee, Wisconsin, Attorney for Erich Emil Kaufmann.

Ludwig Soellner, in person, 6103 West Lloyd Street, Wauwatosa, Wisconsin.

Cain & Farley, Esqs., 135 West Wells Street, Milwaukee, Wisconsin, Attorneys for Helmut E. Prause.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action Nos. 955, 831, 948, 960, 965, 952, 959, 963, 967, 949, 954, 953, 966, 961

MOTION TO CONSOLIDATE—Filed May 12, 1943

Now comes the plaintiff by Carl R. Becker, Assistant United States Attorney, and F. Kirk Maddrix, Special Assistant to the Attorney General, and moves the Court to order, pursuant to R. 42 (a) of the Federal Rules of Civil Procedure, that the foregoing actions be consolidated for the purpose of determining in one trial the common issue of fact hereinafter described in an Affidavit annexed hereto and to direct that the same Judge who determines the con-

solidated issue shall try thereafter the remaining issues separately and *in seriatim*.

Dated at Milwaukee, Wisconsin, this 11th day of May, 1943.

B. J. Husting, United States Attorney, By Carl R. Becker, Assistant United States Attorney, By F. Kirk Maddrix, Special Assistant to the Attorney General.

[fol. 19] IN UNITED STATES DISTRICT COURT

Civil Action Nos. 955, 831, 948, 960, 965, 952, 959, 963, 967, 949, 954, 953, 966, 961

[Title omitted]

AFFIDAVIT OF CARL R. BECKER—Filed May 12, 1943

STATE OF WISCONSIN,
County of Milwaukee, ss:

Carl R. Becker, being duly sworn, deposes and says that he is an Assistant United States Attorney for the Eastern District of Wisconsin, and as such is one of the attorneys for the plaintiff, and

F. Kirk Maddrix, also being duly sworn deposes and says that he is a Special Assistant to the Attorney General and as such is one of the attorneys for the plaintiff.

1. Each of the above mentioned actions was instituted under Section 338 of the Nationality Act of 1940, 54 Stat. 1158 (U. S. Code, Title 8, Section 738) to set aside the order admitting the defendant to citizenship in the United States and to cancel his certificate of citizenship on the grounds that it was obtained by means of fraud as more particularly set forth in the complaints heretofore filed in this Court.

2. It is the purpose of the plaintiff to prove:

That there existed in the Eastern Judicial District of Wisconsin an organization known as the Friends of New Germany which later changed its name to that of the German-American Bund; and that there also existed in said

[fol. 20] Judicial District a corporation known as the Grafton Settlement League, Inc., which corporation was controlled and dominated by the German-American Bund for the operation of Camp Hindenburg, the official camp of the German-American Bund, designed to promote and further the objects of the Bund.

That the Friends of New Germany and/or the German-American Bund was a militant organization which advocated and instilled in each of its adherents, regardless of his status as a citizen of the United States, a lack of attachment to the principles of the Constitution of the United States and an ill-disposition on the part of the adherents to the good order and happiness of the United States; encouraged, fostered, and demanded in its adherents supreme and unswerving allegiance and fidelity to the German Reich; and engaged in the furtherance of totalitarian principles of German National Socialism.

That each of the above named defendants were either members of the Friends of New Germany, later designated and known as the German-American Bund, or that they figured prominently in the activities of the Bund to such an extent that they defended its principles and sympathized with its aims and purposes.

3. The fact that the complaints filed against the above named defendants alleging that they procured their certificate of citizenship fraudulently is common to each of the defendants named herein.

4. Issue having been joined in each of the foregoing actions, they are now on the civil trial calendar of the United States District Court for the Eastern District of Wisconsin, and each action is pending independently of the other.

5. The proof which the Government will offer as described and set forth in Paragraph 2 hereof is common to each of the defendants named herein.

6. Rule 42 (a) of the Federal Rules of Civil Procedure provides for a joint trial of several causes or any one issue thereof where a common question of law or fact exists. To avoid unnecessary costs or delay the Court may in its discretion consolidate the actions, or any one issue thereof for the purpose of trial convenience.

[fol. 21] 7. Unnecessary cost and delay as well as inconvenience to the Court and to the parties would result from separate trials of the common issue of fact above described by reason of the following:

(a) The United States will offer substantially the same evidence through the same witnesses, in support of the common issue of fact aforesaid. Separate trials would, accordingly, require the recall of such witnesses and the repetition of the same proof on fourteen different occasions.

(b) The said evidence which the United States will offer is somewhat voluminous. Your deponents estimate that it will require between four to six trial days to complete such proof.

(c) The United States Government would be inconvenienced and handicapped in actions presently pending in other districts of the United States wherein it will be necessary to adduce similar proof through said witnesses, and that the recall of said witnesses for successive hearings in this Court would produce crippling delays in the orderly disposition of these cases.

8. A consolidation of the actions as to the one common issue hereinabove described will enable the United States to introduce a greater part of its proof against all defendants at one time, thereby eliminating unnecessary delay, duplication, and expense.

9. A consolidation of the actions as to the one common issue hereinabove described will not prejudice any defendant, since:

(a) The actions are equitable in nature and triable without a jury.

(b) No defendant would be deprived of any right material to his defense. Each will have the same rights and privileges to cross-examine witnesses and object to the admissibility of evidence offered as he [fol. 22] might have in a separate trial, and the Court could rule accordingly to prevent prejudice to any defendant.

Wherefore, your deponents respectfully ask the Court to order that the foregoing actions be consolidated for the purpose of determining in one trial the common issue of fact hereinabove described and to direct that the same Judge who determines the consolidated issue shall try thereafter the remaining issues separately and in seriatim.

Carl R. Becker, Assistant United States Attorney; F. Kirk Maddrix, Special Assistant to the Attorney General.

Sworn to before me this 11th day of May, 1943. Theodora E. Schwaab, Notary Public, Milwaukee County, Wis. My commission expires June 13, 1944.

[File endorsement omitted.]

[fol. 23] In United States District Court

[Title omitted]

Answer to Motion to Consolidate—Filed May 28, 1943

Now comes the defendant, Paul Knauer, represented by himself, and moves the Court not to consolidate this civil action brought under and pursuant to R. 42(a) of the Federal Rules of Civil Procedure with those brought under the same section by the plaintiff against thirteen other persons for the reason and on the ground that defendant is thereby deprived of his right to a separate trial which is material to his defense, and he respectfully submits:

That a motion of review of the decision of the Honorable F. Ryan Duffy, Judge of the District Court for the Eastern District of Wisconsin, of May 3, 1943 has been served and filed on May 6, 1943,

That this motion is still pending and no disposition has been made as to this motion,

That according to the affidavit of the plaintiff, the said plaintiff intends to state conclusions and not facts,

That the affidavit of plaintiff is too general, too vague and does not apply to the defendant,

That there seems to be a slight confusion on the part of the plaintiff as to the connection of the said Paul Knauer with the organizations mentioned in the affidavit,

[fol. 24] That testimony to be presented would not, in any way, relate to the said Paul Knauer,

That the name of the said Paul Knauer, due to the fact of having been an officer and spokesman of a German American organization not referred to in the affidavit of the plaintiff and not connected with any of the organizations mentioned, has been blackened, stigmatized and slandered,

That false reports have been maliciously and continuously printed by newspapers with the tendency of injuring the reputation of the said Paul Knauer, to defame his reputation by slander, to calumniate him, to cast aspersions on him, to charge him falsely and knowingly with un-Americanism, to set a mark of disgrace on him, to call and characterize him by the most opprobrious epithets and mark him as hostile to true Americanism,

That the consolidation of other cases with the case of the said Paul Knauer would create a prejudice against the other thirteen defendants.

Dated at Milwaukee, Wisconsin, this 28th day of May, 1943.

P. Knauer.

[File endorsement omitted.]

[fol. 25] In United States District Court

Civil Action Nos. 955, 831, 948, 960, 965, 952, 959, 963, 967,
[fol. 26] 949, 954, 953, 966, 961

[Titles omitted]

Order Granting Motion to Consolidate—Filed June 16, 1943

The plaintiff, United States of America, having moved for an order consolidating all of the above-entitled actions for a joint trial of any common question of fact thereof, pursuant to Rule 42(a) of the Federal Rules of Civil Procedure, and the said motion having come on to be heard on the first day of June, 1943, and Carl R. Becker, Assistant United States Attorney for the Eastern District of Wisconsin, and F. Kirk Maddrix, Special Assistant to the Attorney General, for plaintiff, having appeared in support thereof, and the defendants Henry Charles Pfaff and Eric Emil Kaufmann having appeared by H. William Ihrig, Esq.,

in opposition thereto, and the defendant, Paul Knauer, having appeared in person, in opposition thereto, and the defendant Hans Behnke, having appeared by Homer Clark, Esq., in opposition thereto, and the defendant John Fred [fol. 27] Falk, having appeared by Julius O. Roehl, Esq., in opposition thereto, and the defendant Ewald Schneider, having appeared by Val Dittman, Esq., in opposition thereto, and the defendant Emil Schellong, having appeared by Erwin Fritz, Esq., in opposition thereto, and the defendants Joseph Wippl and Helmut E. Prause, having appeared by Cain & Farley, Esqs., in opposition thereto, and the defendant Otto Kettner, having appeared in person, in opposition thereto, and the defendant Ludwig Soellner, having appeared in person, in opposition thereto, and the defendant Karl Kalusok, having appeared by Marvin M. Fein, Esq., and having consented to the said motion, and the defendant William Carl Greeb, having failed to appear, either in person or by counsel, and the defendant Herbert Ernst Poetzsch, having appeared by H. A. Sawyer, Esq., and neither opposed nor consented to the said motion,

It Is Ordered that the motion to consolidate for trial the common issues in all the within actions be and the same is hereby granted; and it is further

Ordered that the within actions be, and the same are hereby consolidated for trial, for the purpose of receiving the evidence of the plaintiff, common to each case, concerning the organization, aims, purposes and activities of the German-American Bund, its national and local subdivisions, its predecessors and affiliates, including the Grafton Settlement League, Inc., subject to the usual right of cross-examination and objection by each defendant; and it is further

Ordered that each defendant, at said consolidated hearing, submit rebuttal evidence, if any, relating to the aforesaid common issues; but that such rebuttal evidence [fol. 28] shall be (a) without prejudice to each defendant offering evidence in his separate trial concerning his individual explanation of his membership and association with any of the organizations mentioned in the consolidated trial of such common issue, and (b) without prejudice to each defendant offering evidence in his separate trial with reference to any other defense raised in his answer; and it is further

Ordered that upon the conclusion of the said consolidated hearing, the trial of each defendant shall continue separately.

Dated at Milwaukee, Wisconsin, this 16th day of June, 1943.

F. Ryan Duffy, United States District Judge.

[File endorsement omitted.]

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

Civil Action Nos. 955, 831, 948, 960, 965, 952, 959, 963, 967, 949, 954, 953, 961

ORDER FOLLOWING PRE-TRIAL CONFERENCE—Filed September 10, 1943

At a pre-trial conference held this date with reference to the issues to be tried at the consolidated trial of the common issues in the above entitled actions, it was stipulated and agreed by all parties:

1. Plaintiff may offer Photostat copies of certain documents, records, and portions of newspapers which it desires to offer in evidence on the trial of said common issues, with the same force and effect as though the original of each had been offered, but with the reservation that each defendant retains the right to object to any or all of same on the [fol. 30] grounds of irrelevancy and immateriality, and defendant Knauer agreeing to said stipulation with the understanding that membership in the German-American Bund or its predecessor organization, which he denies, is not implied by his so agreeing.

2. Plaintiff desires to offer certain writings, articles, and documents which are printed or written in the German language. Plaintiff will offer translations of same into the English language. It was stipulated that the various employees of the United States Government who made such translations from German to English would testify in court if they were called as witnesses on the trial that such translations so made by them were and are accurate to the

best of their belief and information. Such stipulation shall not preclude any defendant from offering proof as to what such defendant considers to be the proper translation of such writings, articles, and documents.

3. Any party may, subject to objections of relevancy and materiality, offer clippings or Photostat copies of articles published in any local newspaper, as articles appearing in said local newspapers.

Dated at Milwaukee, Wisconsin, this 10th day of September, A. D. 1943.

F. Ryan Duffy, Judge.

[File endorsement omitted.]

[fol. 31] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action Nos. 955, 831, 948, 960, 965, 952, 959, 963, 961, 966

UNITED STATES OF AMERICA, Plaintiff,

v.

PAUL KNAUER, HANS BEHNKE, JOHN FRED FALK, HERBERT ERNST POETSCH, Ewald Schneider, Karl Kalusek, Henry Charles Pfaff, Emil Schellong, Helmut E. Prause, Ludwig Soellner, Defendants

Memo Opinion, and Findings of Fact and Conclusions of Law on Common Issues Consolidated for Trial—Filed May 25, 1944

Each of the ten above entitled actions was brought under Section 338 of the Nationality Act of 1940 (54 Stat. 1158, 8 U. S. C. A., Sec. 738) to revoke, on the ground of fraud, the order admitting the defendant to citizenship and to cancel the certificate of naturalization issued to the defendant.

The complaint alleges in each case that the representations made by the defendant in his petition for naturalization and in his oath of allegiance were fraudulent for the following reasons: (1) in that he did not in good faith renounce or intend to renounce absolutely and forever all allegiance and fidelity to Germany, but in fact retained and

intended to retain allegiance and fidelity to Germany; and in that he did not in fact intend when he took his oath to bear true faith and allegiance to the Constitution and laws of the United States; and (2) in that he was not in fact attached to the principles of the Constitution at the time of the filing of his petition for citizenship nor during the five years prior thereto; and in that he did not in fact intend to support the Constitution and laws of the United States against all enemies, foreign and domestic. All the defendants deny these allegations.

An order was entered consolidating for trial the common issues in all said actions. The principal common issue concerns the organization, aims, purposes, and activities of the German-American Bund, its national and local subdivisions, predecessors and affiliates, including the Grafton [fol. 32] Settlement League, Inc. After the conclusion of the consolidated trial on the common issues, separate trials were had as to the claims of the government against the individual defendants. The findings filed herewith will deal only with the common issues.

The evidence clearly, unequivocably, and convincingly establishes that the German-American Bund and its predecessor organizations were un-American and subversive, and that the teachings of such organizations were contrary to the principles of the Constitution of the United States.

Findings of Fact

1. About October 12, 1924, while Adolph Hitler was languishing in jail obsessed with his literary thoughts and political ambitions, some of his followers in Chicago, including Fritz and Peter Gissibl, organized the "Free Society of Teutonia". These organizers in the United States were members of the National Socialist German Workers Party (NSDAP), better known later as the "Nazi Party". The aim of the new organization in this country was to unite all Germans with nationalistic leanings; to convince them that Hitler was the leader of Germans everywhere; and to advance his political ideology and personal ambitions. In 1926 the name of the society was changed to "National Socialist Society of Teutonia", but its aims and purposes remained unchanged, and its organizational structure was patterned after that of the National Socialistic Party in Germany.

2. In 1932, after the Hitler movement had grown powerful in Germany, the name was changed to "The Friends of the Hitler Movement". Funds collected by the above named societies were sent to Germany to advance the cause of Hitler. On January 30, 1933, Hitler became Chancellor of Germany, and not long thereafter the name of the organization in this country was changed to "Friends of New Germany". It was the only organization in the United States recognized by NSDAP. Its primary aim was to spread the philosophy of National Socialism in this country. In 1936 the name was again changed, this time to "German American Bund" (hereafter referred to as the "Bund"). The national Bund Leader used the organizational book of the NSDAP as the basis for the regulations to govern the Bund. As had been done in Germany, the Bund divided this country into "Gaus" or districts, and "Ortsgruppes" or units; smaller subdivisions likewise followed the Nazi pattern. The official Nazi greeting, "Heil Hitler", later modified to "Heil" or "Seig Heil" was adopted, as well as the Nazi salute with outstretched arm, the Horst Wessel Song, and such Nazi paraphernalia as the swastika. Holidays celebrated by the Nazi Party in Germany were days of celebration in this country for the Bund, one of the principal ones being April 20, Adolph Hitler's birthday. In the official calendar of the Bund for the year 1937, July Fourth was not designated as Independence Day but as the founding of D.K.V., the economic branch of the Bund whose function was to promote the sale of German goods in this country.

3. From its inception the Bund was directly affiliated with the National Socialist German Workers Party of Germany, and after Hitler became head of the German government, it was affiliated with the German Reich. Fritz Gissibl and a number of other early leaders of the Bund, including Heinz Spanknoebel, Ernest Vennekohl, and Joseph Schuster, have returned to Germany and hold high positions in its present government and in the Nazi Party.

[fol. 33] 4. The basic qualifications for membership in the Bund were that the applicant be of Aryan descent—free from Jewish or Negro blood, a believer in the leadership principle, and an adherent to the German National Socialist world philosophy. If it were known that an applicant lacked any of these qualifications, membership was denied.

An applicant was also required to sign an application blank stating he believed in the leadership principle, and he was supposed to furnish a reference from someone in Germany as well as from someone in this country. A probationary period was required prior to final acceptance to membership, but known or former members of NSDAP were accepted immediately.

5. Both American citizens of German descent and German nationals were eligible for membership in the Bund until 1935-36, but at that time an order was issued from Germany to the Bund leadership in this country instructing German nationals to retire from the organization. This order was generally ignored. After 1935 a group was formed within the Bund known as "Prospective Citizens League", made up of German nationals. Its purpose was to keep such German nationals withih the Bund, and to foster their adherence to the Nazi cause.

6. The Bund maintained a uniformed corps called the "O.D." (Ordungs Dienst) which was patterned after the "S.A." (Storm Troopers) of the Nazi Party in Germany, and whose alleged purpose was to keep order at large meetings. It was drilled in military formations, however, using the commands set out in the party regulations for the S.A. in Germany. Its official greeting first was "Heil Hitler", and later "Seig Heil" and "Heil".

7. The "Youth Group" of the Bund likewise was patterned after the "Hitler Youth" of Germany, and through this organization instruction in the principles of National Socialism, the leadership principle, and the supremacy of their German blood was given to the children. Trips to Germany for selected children were sponsored and paid for by the Volksbund fuer das Deutschtum im Auslands, or "V.D.A." Through the V.D.A. the Nazi Party maintained contact with German elements in foreign countries. It was planned that the Youth Group would be the training ground for future O.D. and Bund leaders.

8. The Friends of New Germany and later the Bund maintained camps where Nazi flags were flown, Nazi paraphernalia exhibited, Nazi printed propaganda distributed, and where the speakers expounded the theories of National Socialism. One such camp was located a short distance north of Grafton, Wisconsin, and was later moved

to a new location to the south of that city, and was known as Camp Hindenberg.

9. The Bund and its predecessor organizations published and distributed various newspapers, among which were "Deutscher Zeitung", "Deutscher Weckruf and Beobachter", and "Deutscher Weckruf and Beobachter and Free American". Each in turn was the official newspaper of the Bund at the time it was published, and was used to disseminate the philosophy of German National Socialism in the United States, to foster an allegiance to Hitler and the Nazi Party, and to incite in the readers thereof a contempt for democratic institutions. Much of the material contained therein was distributed by propaganda agencies in Germany controlled by the Nazi Party.

[fol. 34] 10. The Bund published and distributed other propaganda through the local units such as articles and speeches, including "Blood Is Sacred" by Wilhelm Kunze, and "The Cultural Mission of the Friends of New Germany" by Walter Kappe. All such literature stressed the philosophy of National Socialism, the blood theory, and loyalty to Germandom. Yearbooks were also published, the cover on the 1937 issue displaying a photograph of Adolph Hitler greeting Bund leader Fritz Kuhn and displaying the motto, "Bound to Germany, Obligated to America".

11. One of the main tenets of National Socialism is the leadership principle, under which unquestioned obedience is owed to the leader who, supposedly, has absolute and complete authority over all Germans wherever they may be. Sub-leaders in the Party are responsible to and derive their authority from him. The Bund accepted this philosophy and was conducted accordingly, the Bundesfeuhrer having supreme and unlimited authority. The Bund was the Nazi Party's means of conveying to persons of German extraction in this country the doctrine that all persons of German blood, as members of the German "volk", owed obedience, loyalty, and allegiance to the leader of the German nation, Adolph Hitler.

12. The Bund taught that, under the Nazi concept of racial superiority and unity, persons born of German blood remained Germans regardless of the country in which they might reside or what foreign citizenship papers they might

obtain. As a reminder of their "Germandom", the Bund distributed blue candles to be burned at Christmastime by Bund members.

13. For the purpose of strengthening this "volk" concept, group trips to Germany were arranged, the principal one being in 1936 at the time of the Olympic Games. Fritz Kuhn, the Bundesfeuhrer, and other Bund leaders, including George Froboese of Milwaukee, were received at the Chancellery by Hitler. A gift of $3,000.00 was handed by them to Hitler, together with a "Golden Book" containing the names of those who had contributed to the fund.

14. One of the Bund slogans often displayed at meetings was "Ein Volk, Ein Reich, Ein Feuhrer". This emphasized the Bund teaching that allegiance and devotion to Hitler and the German "Volkstum" was superior to any obligation to the United States. The Bund looked forward to the day when the national socialist form of the German government would supplant the constitutional democratic form of the United States government.

15. The Bund was actively isolationist, its leaders believing thereby to be of greatest service to Germany. To keep America out of the war and to extract promises to strive for that end from candidates for public office, in order to receive the support of Bund members, was constantly urged. The most notorious of the Bund "commands", by which the Bund maintained and exercised control and discipline over its members, were Commands Nos. 35 and 37 which advocated and directed non-compliance with the Alien Registration and the Selective Training and Service Acts.

16. The Bund espoused the political philosophy of National Socialism as taught, advocated and exercised by Nazi Germany. The basic principles as exemplified by the Nazi Party are the leadership principle, racial superiority of the Germans, the principle of the totalitarian state, the principle of Pan-Germanism as related to the blood theory, and the principle of Lebensraum (living space). All [fol. 35] of these are completely contrary to the democratic theory of government as known and practiced in this country. Each of the basic tenets of national socialistic ideology is the antithesis of its counterpart in our American political system. Nazi Germany has as one of its avowed

purposes the destruction of the democratic form of government as practiced in this country. Nazi leadership proclaimed the democracies as decadent.

17. The Friends of New Germany was organized in Milwaukee in 1933, but from 1936 until its dissolution after Pearl Harbor the organization was known as the "German-American Bund". Among its early leaders was George Froboese, who was Unit Leader, Midwestern Gauleiter, and Bundesfeuhrer of the national organization. He maintained his position as leader of the Milwaukee unit during its entire existence in Milwaukee.

18. The Milwaukee unit of the Bund and its predecessors was governed by the leadership principle. An oath was administered to candidates at initiation ceremonies at which they promised allegiance to the leader and obligated themselves to carry out all his instructions, as they knew their leader would require nothing illegal of them. "Bundesbefehles" or commands were received from national headquarters about once a month and read to the members at meetings.

19. The Milwaukee unit customarily closed its meetings by singing the Horst Wessel song during which the members stood at attention with outstretched arms, palms down, in a gesture identical to the Nazi salute. At their meetings the Nazi flag was used, but the American flag also was displayed. About 75 to 100 members purchased the 1937 and 1938 yearbooks and the proceeds thereof were remitted to Bund national headquarters. Contributions were solicited from Bund members to defray the legal expenses of Fritz Kuhn's trial at New York City. National Bund leaders and prominent Nazis from time to time delivered speeches to the Milwaukee unit. Some of the speakers were Fritz Kuhn, Wilhelm Kunze, Fritz Gissibl, Joseph Schuster, Walter Kappe, Colin Ross, German Consul Berg, and Dr. Tannenberg. Motion pictures were shown at Bund meetings depicting the progress of the new Germany under Hitler, two of the subjects shown being "The Congress of the National Socialist Party in Germany" and "The Life of Horst Wessel." German propaganda, including speeches by Hitler and Goebbels, was customarily on sale at local unit meetings.

20. The local Bund unit had a uniformed O. D. Its color guard displayed both the American flag and the Bund flag, the latter of which bore the swastika emblem. The principal purpose of the O. D. was to protect members at meetings. It conducted military drills at Camp Hindenberg.

21. The Milwaukee unit maintained a Youth Group (Jugendschaft), organized in 1935, consisting of boys and girls whose ages ranged from eight to sixteen years. The children wore uniforms similar to those worn by the Hitler Youth; their flag, with the symbol of the "blitz," was similar to the flag of the Nazi Youth; they sang the Horst Wessel song and gave the Nazi salute. They were required to attend large meetings of the Bund at the Milwaukee Auditorium and at Camp Hindenberg.

22. In accordance with national Bund policy the Milwaukee unit had a board of directors called the "Amptswalterschaft," composed of the leader and various offi- [fol. 36] cers of the unit, the purpose of which was to guide the activities of the local unit. However, it could not go contrary to the wishes of the local leader.

23. The Milwaukee unit used the Highland Cafe as a rendezvous and meeting place in 1938, 1939, and 1940. After a police investigation and a hearing before a committee of the Milwaukee Common Council, the tavern license of the Highland Cafe was revoked, which resulted in the closing of that place.

24. The local unit sent representatives to the various district and national Bund conventions. In 1936 the Bund sponsored a trip to Germany and the Milwaukee unit was represented by George Froboese, Hans Behnke, and others. In Germany these representatives of the Bund paraded in uniform through certain streets of Berlin to the Reich Chancellery, and presented the "Golden Book" and a $3,000.00 gift to Hitler. Froboese was one of the few members of the group admitted to the presence of Hitler at the presentation ceremony. A photograph showing Hitler shaking hands with Froboese on this occasion is in evidence. While in Germany the Bund representatives also placed wreaths upon the graves of Horst Wessel and of the Unknown Soldier.

25. In 1939 the local Bund leaders conceived an organization through which the Bund could control and operate Camp Hindenberg at Grafton, Wisconsin, and for this purpose caused the Grafton Settlement League, a non-profit holding company for the camp, to be incorporated. Froboese and Belmke chose a site for the camp and Froboese withdrew $2,900.00 from the Bund bank account to make a payment on the property. Thereafter the camp was set up and became the scene of much Bund activity. Some Bund members built cottages and lived there part of each year.

26. The Milwaukee unit was an aggressive branch of the national organization of the Bund. In addition to meetings at the Milwaukee Auditorium, it staged demonstrations and meetings at the Forst Keller and the Highland Cafe. Attempts were made by outsiders to break up several of these gatherings, resulting in physical violence and disturbances. On several occasions the O. D. in uniform were stationed throughout the hall, as a protective measure against such attacks. At times a number of O. D. from the Chicago unit were sent to Milwaukee to assist the local O. D. in preserving order. As a result of these disturbances and by reason of the Nazi nature of the organization, such as its uniforms and emblems on armbands, swastika flag, Nazi salute, etc., the local unit acquired an unfavorable reputation in Milwaukee. The local press rebuked the Milwaukee Bund because of its un-American activities. While some members during the time of these occurrences disassociated themselves from the organization, others were unmoved and the unit continued undaunted upon its activities until after Pearl Harbor.

And as

Conclusions of Law

1. The German-American Bund and its predecessor organizations were un-American and subversive and the teachings of such organizations were contrary to the principles of the Constitution of the United States.

[fol. 37] 2. The fact that a person was a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant a judgment of cancellation of a decree of naturalization.

These findings of fact and conclusions of law will be filed in each of the ten cases listed in the caption and will stand as Part I of the findings and conclusions in each case. Part II will be devoted to the nature and extent of the participation, if any, of each individual defendant in the activities of the Bund, and the knowledge, if any, on the part of the individual defendant of the real purposes of the Bund. There will also be there considered all other evidence bearing on the question of whether such defendant obtained his certificate of naturalization by fraud.

Dated at Milwaukee, Wisconsin, this 25th day of May, A. D. 1944.

(S.) F. Ryan Duffy, Judge.

[File endorsement omitted.]

[fol. 38] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 955

UNITED STATES OF AMERICA, Plaintiff,

v.

PAUL KNAUER, Defendant

OPINION, FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed June 16, 1944

In the above entitled case I have heretofore filed Part I of my findings of fact and conclusions of law concerning the organization, aims, purposes, and activities of the German-American Bund, and therein expressly reserved for further findings and conclusions the question whether the government has established by proof that is clear, convincing, and unequivocal that the representations made by the defendant in his petition for naturalization and or in his oath of allegiance were fraudulent.

The government contends that the defendant did not in good faith renounce or intend to renounce, absolutely and forever, all allegiance and fidelity to Germany, but that he in fact intended to retain allegiance and fidelity to Germany; and that when he took his oath of allegiance he did not intend to bear true faith and allegiance to the Consti-

tution and laws of the United States. The government further contends that at the time the defendant filed his pe-
[fol. 39] tition for citizenship and during the five years prior thereto he was not attached to the principles of the United States Constitution, and that he did not in fact intend to support the Constitution and laws of the United States against all enemies, both foreign and domestic.

Citizenship is a privilege which no alien may obtain except upon full compliance with the statutory requirements specified by Congress. As was said in *United States of America* v. *Schuchhardt*, 49 F. Supp. 567, 570.

> "The granting of citizenship to an alien is a privilege. He cannot claim it as a matter of right. Therefore, all the requirements prescribed by law must be fully met and complied with by the applicant. * * *"

To enable an alien to obtain citizenship, he must be attached to the principles of the Constitution of the United States, and be well disposed to the good order and happiness of the United States. *8 U. S. C. A., Sec. 707.* If an applicant for citizenship conceals the fact that he is not attached to the principles of the Constitution of the United States and is not well disposed to the good order and happiness of the United States, or if he does not in good faith renounce his allegiance and fidelity to the government to which he has been subject, or if when he takes his oath of allegiance he does not intend to bear true faith and allegiance to the Constitution and laws of the United States, or if he takes the oath with mental reservations, then a fraud is committed for which the certificate of citizenship may be cancelled. *United States* v. *Krause*, 136 F. (2d) 935; *United States* v. *Schuchhardt*, supra; *Schurmann* v. *United States*, 264 Fed. 917;
[fol. 40] *United States* v. *De Tolna*, 27 F. (2d) 984; *United States* v. *Kuhn*, 49 F. Supp. 407.

A determination must be here made of the state of mind of the defendant when he filed his petition for naturalization, and/or when he took his oath of allegiance. It is well established that the state of a person's mind on a certain date may be proved by his subsequent actions and statements. *Luria* v. *United States*, 231 U. S. 9; *United States* v. *Krause*, supra; *Turlej* v. *United States*, 31 F. (2d) 696; *Schurmann* v. *United States*, supra; *United States* v. *Kramer*, 262 Fed. 395; *United States* v. *Orth*, 51 F. Supp. 682.

However, the burden is upon the government to establish the affirmative of its contentions by evidence that is clear, convincing, and unequivocal. To all practical intents and purposes it is the same test as "beyond a reasonable doubt."

In evaluating the statements and actions of the defendant we must maintain the proper perspective. Conduct and comments which might not be tolerated when our country is at war might in times of peace come within the realm of permissible political discussion. Most of the statements of the defendants in the ten consolidated denaturalization cases upon which the government relies to show their mental attitude when they took their oaths of allegiance were made before the date when our nation was attacked. All such statements should be considered in the light of the conditions which then existed.

[fol. 41] FINDINGS OF FACT (Part II)

27. Paul Knauer was born at Saalfeld, Germany, on March 3, 1895. After a high school training he attended the University of Leipzig for one semester and then joined the German Army during World War I. He was a top sergeant and was taken prisoner. His government awarded him the decoration of the Iron Cross. After the war he studied law and economics for three years at Leipzig-in-Halle.

28. The defendant arrived in the United States in April, 1925. He filed his declaration of intention to become a citizen on December 4, 1929. He visited Germany for several months during 1934. On November 20, 1936, he filed his petition for naturalization in the Circuit Court of Milwaukee County. In his petition he represented that he was attached to the principles of the Constitution of the United States and was well disposed to the good order and happiness of the United States. He took his oath of allegiance and was admitted to citizenship on April 13, 1937.

29. In 1931 the defendant told a newly arrived immigrant from Germany that in his opinion the aim of the Hitler National Socialist Party in Germany was good and would go forward, and that this movement would become necessary in the United States because of the influence of the Jews and Communists.

30. During his trip to Germany in 1934 he read Hitler's "Mein Kampf" and upon his return told a business asso-

ciate that he had met Hitler and was very proud of that fact. He told another acquaintance that he was offered a [fol. 42] job with the government in Germany at 600 marks a month, that Hitler was the savior of Germany, and that the Hitler youth organization was an excellent influence upon the children in Germany.

31. During the winter of 1934-35 while a delegate to the Wisconsin Federation of German-American Societies the defendant published an appeal in a German newspaper promoting contributions for winter relief in Germany. He represented himself as having received the necessary credentials from the German Consul in Chicago to undertake the collection. He did in fact forward the contributions made to said consul.

32. At a meeting of the delegates of the Federation of German-American Societies on January 13, 1935, a letter from the German Consul in Chicago was read which stated that on the occasion of his visit to Berlin he would comply with the request of defendant Knauer to arrange for free delivery of Homeland films and that they would be placed at the disposal of the Federation.

33. In 1935 Knauer reprimanded a delegate to the Federation for passing out pamphlets opposing the national socialist government in Germany.

34. In 1935 the Federation of German-American Societies of Wisconsin consisted of seventy organizations representing a membership of more than 8,000 people. The Milwaukee unit of the Bund attempted by means of infiltration tactics to gain control of this central organization. A [fol. 43] persistent effort was made by the Bund delegates to have the swastika flag carried in parades of the Federation and at park celebrations. These efforts were made by defendant Knauer, George Froboese, and Eugene Buerk. At a meeting of delegates in January, 1935, the swastika flag question was raised concerning the proposed German-Day celebration. The defendant voted for it, but the motion did not prevail. In June, 1935, the defendant renewed the question and again urged that the swastika flag be displayed, but this motion was voted down. Certain delegates, led by Froboese, became abusive because of this action and withdrew from the hall upon request.

35. The Bund thereupon set out to organize and unite societies in opposition to the leadership of the Federation. They issued and widely circulated a pamphlet entitled, "Merely Our Point of View". The pamphlet contained the statement, "* * * with heads high and in the firm belief in the greatness of the German Reich Fuehrer, we shall wear the Honor Cross conferred by Adolph Hitler * * *."

36. In spite of the decision of the Federation, the swastika flag was raised under the protection of a number of Bund O. D. men at the German-Day celebration in 1936, and when it was torn down, a disturbance occurred. At the first meeting of the Federation following this incident, defendant Knauer sought to get approval for the showing of the swastika by submitting a motion of confidence for the chairman of the entertainment committee. Not only did this motion fail, but a vote of censure was taken. Thereafter the German-American Citizens Alliance was formed. It [fol. 44] became an organized movement in January, 1937. Five small societies joined the Alliance.

37. During the early months of the existence of the Citizens Alliance, meetings were held at Bauman's Tavern, but shortly thereafter were moved to Bund headquarters at the Highland Cafe. The most frequent attendants of the meetings were the defendant, Bund Leader Froboese, Ludwig Soellner, Eugene Buerk, and sometimes Hans Behuke, the secretary of the Milwaukee Bund. Often it was the same people who attended meetings of the Bund and of the Alliance. Although the defendant and other officers of the Alliance contended and still contend that no connection existed between the Alliance and the Bund, the fact is the Alliance was a front organization for the Bund. The Alliance endeavored and did bring into its ranks persons who were sympathetic with the objects of the Bund but who for personal reasons did not wish to be known as Bund members.

38. On February 22, 1937, which was 55 days prior to his naturalization, the defendant Knauer was formerly accepted as a member of the Alliance and was immediately made a member of the executive committee. His first action as a member was to volunteer the collection of newspaper articles that "attacked Germans and German-Americans" and to report to the Alliance upon them. He made such reports

monthly in 1937. In March, 1939, defendant was elected vice president of the Alliance, and as such presided over 42 out of 57 meetings of the Alliance. The president, Weisflog, became inactive and attended meetings only occasionally after defendant Knauer assumed his duties as vice [fol. 45] president. The defendant Knauer dominated and controlled the Alliance. Fifty-three days after his naturalization he acted as master of ceremonies at the first public celebration of the Alliance, which was known as "German Day". He began preparations for this program shortly after his naturalization, and included Dr. Baer, a representative of the German Reich, as a speaker. Two months after his naturalization he urged that the Alliance sponsor a Solistice ceremony, a solemn rite at which a wooden swastika is burned to symbolize the unity of German people everywhere.

39. The defendant Knauer devoted himself with much energy to writing letters and telegrams to those who criticized the Bund or the German government. Upon behalf of the Alliance he prepared letters criticizing the Kenosha City Council for its refusal to allow the Bund the use of its park; he drafted and sent a letter of protest to the American Legion because of statements made at the Legion Convention about the German Army; he prepared and sent a letter to Judge Neelen, criticizing the judge for freeing disturbers of a Bund meeting; he sent telegrams of protest to the Attorney General of Wisconsin and to the Attorney General of the United States demanding an investigation when use of the Milwaukee Auditorium was denied to the Alliance; and it was he who led the successful court fight for the Alliance to obtain its use, based principally upon his testimony that no connection existed between the Bund [fol. 46] and the Alliance. At times he sent out letters of protest in behalf of the Alliance without its consent, and he frequently had protests drawn up ready for approval in advance of Alliance meetings. A meeting of the Alliance had been scheduled for December 10, 1941 (3 days after Pearl Harbor), but the defendant and the secretary were the only ones who showed up, whereupon defendant Knauer postponed the meeting indefinitely because of "bad weather".

40. The defendant Knauer had knowledge of the real aims and purposes of the Bund: He at one time referred

to this organization as "the Fuehrer's grip on American democracy"; he assisted Froboese in the direction and activities of the Bund; he knew of the connection between Froboese and the German Consulate in Chicago, as well as the Foreign Institute in Stuttgart. Notwithstanding this knowledge, the defendant assumed the role of champion and defender of the Bund: In writing to Judge Neelen he referred to the judge's remarks against the Bund as a "slander of a patriotic American organization"; he wrote a critical letter to a Kenosha minister because he had appeared before the Kenosha City Council opposing the Bund's use of the Kenosha park; he wrote a letter to "The Milwaukee Journal" for publication wherein he defended the Bund as an organization rendering "valuable service" to the United States; he wrote to the Board of Directors of the Milwaukee Auditorium saying that the charges against the Bund were a "simple myth"; he wrote [fol. 47] to the Milwaukee Common Council demanding criminal proceedings be instituted against disturbers of a Bund gathering; he published an open letter responding to the Turnverein's condemnation of the Bund, saying it was "a declaration of war directed not only against the Bund as such, but against all Americans who are loyal to the country of their adoption, but show admiration and respect to their native country"; he wrote to the F.B.I. demanding that something be done to stop these "slanderous attacks against an orderly organization"; he prepared and secured the adoption of a resolution by the Alliance calling on the police to prevent a recurrence of disturbances at Bund meetings; he wired Judge James G. Wallace of New York, after his sentencing of National Bund Leader Fritz Kuhn, "Congratulations for having become nationally famous as a party of Jewish conspiracy to crucify Kuhn on stolen evidence," and gave newspaper publicity to this telegram; he personally appeared before the license committee of the Milwaukee Common Council when it was considering the revocation of the Highland Cafe license, and attacked the investigation as unwarranted persecution, and threatened reprisal which "* * * is liable to backfire upon this committee by arousing German-American citizens * * * and it can create a counter pressure you never dreamed of," adding, "We are taking up the challenge," and when the license committee did revoke the Highland Cafe's license he sent a telegram of protest;

he was the prime mover in the creation of a fund to finance an appeal to the courts to test the validity of the revoca-
[fol. 48] tion of the Highland Cafe license; and when the court refused such reinstatement, he wrote a letter to the judge threatening reprisal.

41. Defendant Knauer was active in his assistance to Bund Leader Froboese, and collaborated with him in the management and direction of the Bund and in carrying on Bund correspondence. He helped in the preparation of Froboese's speech to be delivered and in resolutions to be submitted at the 1938 national Bund convention in Chicago. He assisted Froboese in the preparation of articles for insertion in the newspaper, "Weckruf." During Froboese's absence from the city the lady acting as his secretary had instructions to contact the defendant Knauer for advice concerning Bund work. Defendant Knauer and Froboese conducted farewell parties for skilled workers recruited to work in Germany. Froboese and Knauer literally worked "hand-in-glove" to promote the Bund and carry out its purposes. At Froboese's funeral, defendant Knauer eulogized him as a friend and comrade who was the "most persecuted man in Milwaukee."

42. In the year 1936, which was prior to his naturalization, defendant Knauer attended Bund meetings at the Forst Keller and at Camp Hindenburg. He enrolled his daughter in the Jugendschaft of the Bund. He attended a majority of the meetings of the Bund held at the Highland Cafe. He was a stockholder in the Grafton Settlement League. At public gatherings of the Bund he frequently executed the Bund salute and used the salutation, "Heil," "Seig Heil," or "Free America." He owned a cottage at the Bund camp where he had frequent conferences with Froboese.

[fol. 49] 43. There are numerous instances of intimate cooperation between the Alliance and the Bund. At the meeting of February 3, 937, the minutes of the Alliance relate a discussion on the introduction and promotion of D. H. V., the economic branch of the Bund, and that defendant Knauer expressed himself in favor of engaging upon this program. The swastika flag which was torn down at the German Day celebration of the Federation of German-American Societies was presented to the Alliance by Dr. Tannenburg, acting Consul General of the German Reich.

The Bund camp at Grafton was used for Alliance affairs. When a Bundsman was fatally injured at the Bund camp, the Alliance attended his funeral in a group. On another occasion the Alliance dropped its plans to conduct a celebration when it conflicted with a Bund celebration. It gave assurance of full support of the Bund Concord Day celebration in 1937. The Alliance supported the Bund's regional meeting at the Milwaukee Auditorium, supported a Christmas celebration of the Bund Youth Group, supported the Bund's Solistice celebration by advertising and promotion, and accepted the Bund Youth Group into the Alliance upon the request of Froboese. Conversely, a benefit performance was given in 1939 by the Youth Group of the Bund whereby funds were raised for the Alliance, and Bund O. D. protection was given to Alliance-sponsored movie evenings at which occasions defendant Knauer was the principal speaker. The Alliance frequently adopted or approved letters or telegrams which had been prepared [fol. 50] by defendant Knauer in support of Bund activities. In fact after the Alliance was formed, practically all Bund activities received its whole-hearted support.

44. Defendant Knauer was intensely anti-Semitic both prior and subsequent to his naturalization. Frequently he preached racial discrimination against the Jews. He publicly lauded Bund members as "gentile patriots," and denounced Bund opponents as "Jewish agents" and "Jewish puppets." He assisted George Froboese in composing the text of an anti-Jewish resolution demanding a "white-gentile ruled United States," which was introduced at the 1938 national Bund convention.

45. National and local leaders of the Bund considered the Youth Groups, known as the Jugendschaft, as very important and the training of sub-leaders of this group was stressed. The Milwaukee unit of the Bund sent its sub-leader to Germany for a course of training at the V. D. A. school near Berlin. Upon his return to Milwaukee he attempted to put his training into practice through talks and lectures to the Jugendschaft. The national headquarters of the Bund issued orders governing the activities of the Milwaukee unit of the Jugendschaft, among others. Instruction letters, together with books and pamphlets, teaching German history and national socialism were placed at the disposal of members of the Milwaukee Jugendschaft

unit as source material for the preparation of lectures to be given at "Home Evenings." As early as October, 1936, [fol. 51] prior to his naturalization, defendant Knauer enrolled his daughter, then ten years of age, into the Milwaukee Jugendschaft unit of the Bund. He visited and attended meetings of this group at the Bund camp and at the Highland Cafe; and at times he brought his daughter to Home Evening meetings and called for her. When the Milwaukee Bund leader at a meeting of the Alliance pictured the pro-Nazi reputation of the Bund as a hindrance to the growth of the Jugendschaft and requested that the Alliance undertake the sponsorship of this group, defendant Knauer favored the move and the Jugendschaft was admitted to membership in the Alliance.

46. The Wisconsin Federation of German-American Societies, under the leadership of Mr. Bernard Hoffman, frequently opposed the pro-Nazi attitude of the Bund and of the Alliance. Although Mr. Hoffman was proud of his German blood, he was at all times a loyal, patriotic American. Consequently a new approach was made to win societies away from the federation. Defendant Knauer and George Froboese conceived and sought to bring into being a new "United Front" movement. They promoted a meeting of approximately 100 delegates from various German groups at the Atlantic Hotel in Milwaukee on March 12, 1940. Both Knauer and Froboese addressed the meeting. When a delegate stated persons were present at the meeting whom the American public would not support, Froboese replied, "We do not have to have the support of public opinion. Give me my Germans and I will do the job." This United Front movement provoked a statement from the Wisconsin Federation of German-American Societies, to wit, [fol. 52] "The present agitation is not motivated by a desire to aid German-Americans, but (is) just another 'front' for the activities of those elements whose bunds and alliances are by now utterly discredited all over the country."

47. Defendant Knauer had knowledge of the real aims and purposes of the Bund. He was also fully aware of the deep resentment of the loyal German-American elements in Milwaukee toward the Bund and the Alliance because of the public mistrust and prejudice toward them engendered by Bund and Alliance activities. Notwithstanding such knowledge, the defendant continued vigorously his

defense of and interest in various Bund activities as hereinabove described.

48. Defendant Knauer was well acquainted with National Bund Leader Fritz Kuhn, for whose defense he solicited funds, with Bund leader Kunze, and with Dr. Otto Willumeit, whose trial in Chicago he attended, as well as other national officers of the Bund. He knew and corresponded with Wilbur Keegan, national legal counsel for the Bund, with whom he conferred relative to this denaturalization proceeding many months before it was even commenced. He was a regular subscriber and reader of the "Weckruf," the official organ of the Bund, as well as "Facts in Review," a publication issued and circulated by the German Library of Information, a propaganda agency supported by the German government.

49. A secret group, known as "sympathizer-members," [fol. 53] which was a recognized type of membership under a Bund command, comprised a considerable proportion of the membership of the Milwaukee unit of the Bund. Membership lists in the Bund were kept secret. In addition to the precaution of secrecy, the sympathizer members were permitted to enroll under fictitious names. A large part of the records of the national headquarters of the Bund, including membership lists, were destroyed upon order of the national Bund Leader.

50. I find as a fact that the defendant was a member of the Milwaukee unit of the Bund; that he was so considered by its officers and members; that most of his interests and activities were in behalf of the Bund; and that, though completely aware of its aims and purposes, he deliberately vigorously promoted the objects of the Bund.

51. Prior to and after his naturalization, the defendant was an adherent of and continuously preached the national socialist concept of racial unity among those of German blood. He strove by act and utterance to bring about a spiritual revival and political unification of American Germandom. As early as the year 1937, the defendant addressed members of the Alliance on the subject of the German volk, stressing the idea that they were a part of the "Deutsches Volkstum," saying, "With the rise and fall of the German nation, we rise and fall." He emphasized to Alliance members it was their duty and obligation to the

fatherland to protest against a statement by the then Governor Heil which belittled the German Army.

[fol. 54] 52. In 1941 defendant Knauer wrote to Wendell Willkie, "In spite of your very thin German blood we _____ deny you the right to speak in behalf of the German-American element . . . if a man has turned to become a bowing servant of not only our pro-British Administration, but also of the British King . . . this man shows his unworthiness . . ."

53. Defendant Knauer held himself out as the political spokesman of the German-American population of Milwaukee and vicinity, notwithstanding the fact that the groups he represented constituted but a small minority. In this self-assumed role he sought to establish the Alliance as an instrument of political retribution against those who opposed the objects of the Bund in the United States or interfered with its program of service to German government interests. In a letter to Governor Julius Heil protesting an insult to the "great German nation," he prophesied, "You have condemned yourself to the political ash can." The defendant, together with Froboese, threatened the manager of radio station WEKF and his family with personal harm and the station with an advertiser boycott unless the German Hour, which had been cancelled for playing the Horst Wessel song, was returned to the air.

54. Prior to and after his naturalization, defendant Knauer frequently assisted the German government, its representatives and consular officials, in the promotion and accomplishment of matters advancing German interests in [fol. 55] the United States: (a) The defendant wrote at least three letters to Adolph Hitler in the year 1938, copies of which were sent to Heinrich Himmler, Rudolph Hess, and Ernst Bohle of the Deutsches Ausland Institut. One such letter contained a list of 700 German nationals; another was a birthday greeting to Hitler; and another was a redrafted constitution of the Protective League. (b) The Winter Aid work of the German people was officially conducted by the German Reich. Inaugurated by Hitler, it was administered from the beginning by the German Ministry of Propaganda. The German consulates supervised the solicitation and collection of funds in the United States. One medium for raising these funds was "one-

plate dinners." (Ein Topf Essen). As early as the winter of 1934-35 defendant Knauer published his first appeal for German Winter Relief contributions. In 1937 he was the speaker at a one-plate dinner held at the Highland Cafe. (c) In the year 1939 the German consulate in Chicago supervised the recruiting of skilled workers in this area to return to Germany for work in German industries. In Milwaukee this recruiting was conducted at the Highland Cafe by Eugene Buerk and the defendant. They interviewed applicants twice or three times a week, as many as 35 in a day. Private preliminary interviews were given in a side room of the cafe. The applicants would wait in the barroom until called by the defendant in their turn from a prepared list. Every three or four weeks the German Consul of Chicago would come to the cafe, accompanied by [fol. 56] the defendant, Froboese and Buerk, to interview the recruits for a second and final time. The defendant actively participated in these interviews. At intervals farewell parties were given at the cafe for these returning workers and their families, which parties were led by the defendant and Froboese. Upon the closing of the German consulates in the United States, Buerk returned to Germany on the Liner "Drottingholm" with German consular officials. The defendant attended the farewell party given for Buerk.

55. In addition to evidence hereinbefore outlined, such additional evidence was introduced showing defendant's allegiance and fidelity to the German Reich. Some items worthy of mention are: As early as September 2, 1937, the defendant sent a satirical poem to a Milwaukee newspaper for publication. It was entitled, "Blame the Nazis." In a letter to a Protestant clergyman, Knauer sought to justify Germany's exercise of control over churches. In August, 1938, while a clergyman addressed a convention of insurance men saying that ministers in Germany were imprisoned for telling the truth, the defendant arose in the audience and shouted, "It's a lie." He was forced to leave the hall. In February of 1941, the defendant wrote to the Governor of Wisconsin, "It is unfortunate that you as Governor * * * and with your so-called German blood * * * have lowered the dignity of and respect for your august position by adding 'disparaging remarks' about the leadership of the country of your origin while addressing

soldiers at Camp Grant. * * * thus insulting the great [fol. 57] German nation." In April, 1943, the defendant wrote Attorney General Biddle, expressing his "shock" at the "cruel and unusual punishment" in the Stephan case (Stephan was sentenced to death for treason), calling the sentence un-American and a challenge to common sense of justice.

56. The fervor and intensity of defendant's fidelity to the German Reich and Adolph Hitler is demonstrated by the 1938 birthday greeting sent to Hitler by the defendant jointly with Bund Leader Froboese, to wit, "In blind obedience we follow you." Although defendant Knauer is and was a man of great energy and fervor, the record is barren of evidence of a single activity which reflects loyalty on his part to the United States. On May 2, 1938, the defendant at a meeting of the Alliance read a leaflet entitled, "America, the Garbage Can of the World."

57. On the day of his naturalization the defendant was in agreement with the principles of the German-American Bund, which have been described in Part I of the findings herein.

58. The defendant stated to the secretary of George Froboese that his American citizenship was a good thing to hide behind.

59. Upon all the evidence the court finds that the defendant's attitude with respect to fidelity and allegiance to the United States, as well as his attachment to the principles [fol. 58] of the Constitution of the United States, were the same at the time the defendant was naturalized as during the years 1937 through 1941.

60. The attachment of the defendant Knauer in the year 1931 to the aims and objects of Hitler's National Socialist movement, his allegiance and attachment to the Third Reich as manifested by his statements and his frequent use of the Nazi salute in public, his devotion to and promotion of the display of the swastika flag and ceremonies using it in symbolic pledge of fidelity to the Reich, his fierce concern over the good name and honor of the German race, his bitter and acrimonious denunciation of everything which interfered with or stood in the way of the fortunes of the German Reich, his belief in and advocacy of the German racial

concept of duty and obligation of all Germans to the fatherland regardless of citizenship, his belief in and attachment to the principles and concepts of National Socialism, his espousal of the aims and objects of the German American Bund and his active participation therein for the promotion of its aims and objects, his promotion and domination of the German-American Citizens Alliance to further the aims and objects of the Bund, his uninterrupted effort by word and deed to politically activate our German-American people in the interests of the German Reich, his persistent efforts among German-Americans, by means of charitable programs, speeches and movie films, to revive in them a [fol. 59] feeling of fidelity and loyalty to the German Reich, the assistance he rendered to the consular representatives of the Reich in the attainment of matters advancing German interests, his fervent devotion and blind attachment to the Fuehrer at a time when the German Reich was hostile to the United States, his lack of affection for or devotion to the United States, his cynical evaluation of his own American citizenship, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant at the time he filed his petition for naturalization did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, and at the time of his naturalization and at all times thereafter the defendant did not in fact renounce and abjure all allegiance and fidelity to the German Reich, but intended to retain and did retain allegiance and fidelity to the German government.

61. Defendant's belief in and adherence to the concepts of National Socialism as practiced by the Nazi Party in Germany and the German-American Bund in the United States, his activities in promoting the establishment of these concepts in the United States, his opposition to the constitutional principle of political and racial equality of all persons under law regardless of race and color, as evidenced by his campaign of race defilement particularly against the Jews, as well as the evidence in its entirety, [fol. 60] can be interpreted only as establishing, and I so find, that the defendant Knauer at the time of his filing his petition for naturalization, at the time of his naturalization, and at all times thereafter was not in fact attached to the principles of the Constitution of the United States and did not intend to support the same.

Conclusions of Law

1. This court has jurisdiction of the parties to this action and to the subject matter thereof.

2. The order of the Circuit Court of Milwaukee County, Wisconsin, entered on the 13th day of April, 1937, admitting the defendant to citizenship in the United States of America, and Certificate of Naturalization No. 4188490 issued to the defendant, pursuant to that order, were fraudulently and therefore illegally procured by the defendant and should be revoked, set aside, and cancelled.

Comment

The foregoing findings of fact and conclusions of law have been made after an opportunity has been afforded to examine the decision of the United States Supreme Court in *Baumgartner v. United States of America*, decided June 12, 1944.

This case is clearly distinguishable from the Baumgartner case. Here there was evidence showing the at- [fol. 61] titude of the defendant prior to the date that he took his oath on April 13, 1937, which made him a citizen. Furthermore, his strong adherence and belief in the principles of the German-American Bund, which this court has found to be subversive and contrary to the principles announced in the Constitution of the United States, convince me beyond a reasonable doubt that the defendant practiced fraud when he obtained his certificate of naturalization,

Dated at Milwaukee, Wisconsin, this 16th day of June, A. D. 1944.

(Signed) F. Ryan Duffy, Judge.

[File endorsement omitted.]

[fol. 62] IN UNITED STATES DISTRICT COURT

Civil Action No. 955

UNITED STATES OF AMERICA, Plaintiff,

vs.

PAUL KNAUER, Defendant

JUDGMENT—Filed July 7, 1944

The Court having made its findings of fact and conclusions of law, wherein judgment is directed as hereinafter provided:

Now, upon motion of Carl R. Becker, Assistant United States Attorney,

It Is Ordered and Adjudged that the order of the Circuit Court of Milwaukee County, Wisconsin, made on the 13th day of April, 1937, admitting the defendant Paul Knauer to citizenship in the United States of America, be and hereby is revoked, set aside, and cancelled.

It Is Further Ordered and Adjudged that the Certificate of Naturalization, Number 4188490, issued to the defendant, Paul Knauer, by the Clerk of the Circuit Court of Milwaukee County, Wisconsin, be and the same hereby is revoked, set aside and cancelled.

It Is Further Ordered that the defendant, forthwith, upon service of a copy hereof, surrender to the Clerk of this Court said Certificate of Naturalization.

It Is Further Ordered that the defendant, Paul Knauer, forever desist and refrain from claiming any rights, privileges, benefits or advantage whatsoever under said order of admission to citizenship and said Certificate of Naturalization.

[fol. 63] It Is Further Ordered that a certified copy of this judgment be mailed by the Clerk of this Court to the Commissioner of Immigration and Naturalization of the Department of Justice, and to the Clerk of the Circuit Court of Milwaukee County, Wisconsin.

Dated: July 7th, 1944.

F. Ryan Duffy, District Judge.

Entered this 7th day of July, 1944.

B. H. Westfahl, Clerk of Court.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF MOTION—Filed July 12, 1944

To the Office of the United States District Attorney, Federal Building, Milwaukee, Wis.

Please Take Notice that the undersigned will bring the annexed motion on for hearing before the United States District Court for the Eastern District of Wisconsin, presided over by the Honorable F. Ryan Duffy, District Judge, on July 17th, 1944 at 10 A. M. or as soon as the matter may be reached for hearing.

Dated at Milwaukee, Wisconsin, this 12th day of July 1944.

P. Knauer.

[File endorsement omitted.]

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR STAY OF EXECUTION OF JUDGMENT—Filed July 12, 1944

Now comes the defendant Paul Knauer, represented by himself, and moves the Court to grant a stay of execution of its judgment entered July 7th, 1944 pending appeal.

Dated at Milwaukee, Wisconsin, this 12th day of July 1944.

P. Knauer.

[File endorsement omitted.]

[fol. 66] IN UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL—Filed July 19, 1944

Notice is hereby given that defendant in the above entitled action hereby appeals to the Circuit Court of Appeals for the 7th Circuit, in the City of Chicago, State of Illinois, from the judgment and the whole thereof entered in the above entitled action on the 7th day of July 1944.

Dated at Milwaukee, Wisconsin, this 19th day of July 1944.

P. Knauer.

[File endorsement omitted.]

[fol. 67] Bond on appeal for $250.00 omitted in printing.

[fol. 68] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF APPELLEE—Filed July 25, 1944

As required by Section 3 of Rule 10 of the United States Circuit Court of Appeals, appellee makes the following statement:

Name of appellee: United States of America.

Attorney of record for appellee: Timothy T. Cronin, United States Attorney; Carl R. Becker, Assistant United States Attorney, Federal Building, Milwaukee, Wisconsin.

Dated this 25 day of July, 1944.

Carl R. Becker, Assistant United States Attorney.

[File endorsement omitted.]

[fol. 69] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER EXTENDING TIME—Filed August 28, 1944

The defendant and appellant herein having heretofore filed his notice of appeal herein and the security for costs in connection therewith, now on motion of H. William Ihrig, his attorney,

It Is Ordered that the time within which said defendant and appellant shall file the certified transcript of the record on appeal with the clerk of the United States Circuit Court of Appeals for the Seventh Circuit and take such other steps in connection therewith as is required by law and the rules in such case made and provided, including the docketing of said appeal with the clerk of said United States Circuit Court of Appeals for the Seventh Circuit, be and the same hereby is extended to and including the 7th day of September, 1944.

Dated at Milwaukee, Wisconsin, this 28 day of August, 1944.

F. Ryan Duffy, U. S. District Judge.

[File endorsement omitted.]

[fol. 70] In United States District Court

[Title omitted]

Application for Order Granting Leave to Prosecute Appeal in Forma Pauperis—Filed August 30, 1944

Now comes the defendant and appellant Paul Knauer, by H. William Ihrig, his attorney, on appeal, and moves the above court on the attached affidavit and petition of Paul Knauer, defendant and appellant herein, for an order herein granting said defendant and appellant leave to prosecute his appeal herein in forma pauperis from the date hereof, without prejudice to the security for costs on file herein, as provided by Section 832 of Title 28 of the United States Code, and without his being required to prepay fees or costs or for the printing of the record in the appellate court or to give security therefor, upon his said appeal to the United States Circuit Court of Appeals for the Seventh Circuit or to the United States Supreme Court, including all appellate proceedings.

Dated at Milwaukee, Wisconsin, this 28th day of August, 1944.

Paul Knauer, Defendant and Appellant, by H. William Ihrig, Attorney for Defendant and Appellant, 759 North Milwaukee Street, Milwaukee, Wisconsin.

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF PAUL KNAUER—Filed August 30, 1944

STATE OF WISCONSIN,
Milwaukee County, ss:

Paul Knauer, the defendant and appellant in the above entitled action, being first duly sworn, on oath deposes and says that he makes this affidavit in support of an application in the above entitled appeal for leave to prosecute said appeal on his own behalf to the United States Circuit Court of Appeals for the Seventh Circuit, in forma pauperis under Section 832 of Title 28 of the United States Code and the laws in such case made and provided;

That petitioner makes a part of this affidavit all of the records, files and proceedings heretofore had herein;

That since on or about July 1, 1944, petitioner has lived with his family at 729 West Center Street, Milwaukee, Wisconsin, where he has a combination residence and office from which he conducts his business as a general insurance salesman compensated on a commission basis, said premises being rented by petitioner and affiant;

That for about eight years previous to July 1, 1944, he had his residence and office at 2611 West Lisbon Avenue, Milwaukee, Wisconsin, where he rented the same and operated his business therefrom, but which he was compelled to remove from at the demand of a purchaser of said premises from the said landlord of affiant, which purchaser demanded possession;

[fol. 72] That the affiant's sole income is by virtue of his employment as an insurance salesman doing business on a commission basis; that since the above entitled action was commenced against affiant in February 1943, he operated his insurance business under the name of Paul Knauer and Associates and that he has more recently changed the name under which he has being doing such business to Reliance Insurance Agency; that he has had sub-agents working for him but that the said litigation has resulted in his loss of a number of said sub-agents; that since February 1943 when the above action was commenced five of the insurance agency contracts outstanding in affiant's favor under which he wrote insurance business and solicited the same and col-

lected premiums therefor and retained his commissions therefrom, have been cancelled or terminated at the instance of his principals under such insurance salesman and agency contracts, and that this has reduced materially affiant's ability to make a living and carry on his business;

That affiant formerly held an agent's license to transact the business of a real estate salesman but that this was also terminated by his principal and that he is without income from this employment;

That under the Wisconsin Statutes the occupations of real estate salesmen and insurance salesmen are endeavors which require previous issuance of state authorization for execution of the same and that affiant's skill and usual employment has been that of a salesman of insurance and sometimes of real estate in the city and county of Milwaukee, Wisconsin;

That dependency is had by affiant on other licensed brokers and general agents for the issuance of sub-licenses to affiant as a salesman in order for him to engage in his said business, and that the publicity in connection with the within action since February 1943 and prior thereto in connection with publicity in the press in connection therewith, has caused an apparent effective pressure of some public or private opinion to be influential in restricting affiant's employment by others in Milwaukee and Wisconsin upon whom affiant would be dependent for the discretionary granting of a salesman's license authorization so that affiant's means have been reduced and his income and employment restricted.

[fol. 73] That affiant's means consist of the following: (1) his usual occupation of insurance salesman; (2) a 1936 Ford automobile driven over 109,000 miles and used and necessary to affiant in his business as an insurance salesman; (3) a vacant improved lot in Whitefish Bay on which there are delinquent real estate taxes and which affiant has advertised for sale in the newspapers and offered private without being able to sell the same or to receive an offer therefor; (4) life insurance policies which are all borrowed on and are security to such loans; (5) the household and office furniture (used) and of nominal value below the exemption in connection therewith provided by state laws providing for exemption from seizure on execution; and (6) his personal effects exempt from execution under

the laws of the state of Wisconsin, also of nominal value. That affiant does not have any cash or accounts not belonging to his insurance principals, in connection with the operation of his business as an insurance salesman;

That affiant's income consists of not in excess of $175 a month at the present time gross, from which must be deduced the expenses of conducting his business to insure its continuance and provide for the living necessities of his wife, an 8-year old son and an 18-year old daughter, as well as affiant, and that such gross income does not now enable affiant to have for personal living expenses other than is necessary for the carrying on of the expenses of said business, an amount exceeding the exemption from garnishment provided by law in Wisconsin;

That except for said vacant lot referred to above, which is subject to outstanding taxes of at least $500 and which affiant has been unable to obtain a purchaser for to net an amount above the said taxes and expenses of sale and except for said life insurance which is pledged to secure the policy loans thereon, and in connection with which affiant is without means to liquidate the same, that all of the assets and the current rate of income of affiant is exempt from seizure under execution under the laws of the state of Wisconsin.

[fol. 74] That affiant's wife assists affiant in the operation of his insurance office but that she does not receive any income therefrom, and that she also is a housewife conducting the home of the affiant and herself and their children; that the 8-year old son of affiant does not have any employment and that the 18-year old daughter of affiant has only recently completed her high school and has been employed a short time since her graduation from high school, this summer, in an effort to obtain tuition to go to college this fall so as to fit herself to make her own liv-lihood; that said two children mentioned of affiant are American born citizens, having been born to affiant and his wife at Milwaukee County, Wisconsin;

That the cost of filing fees, witness fees and copies of depositions and the expenses of bring- Mrs. George Froboese from an internment camp to the trial to testify, has exceeded the cash total of $250, which affiant paid as required by rules of court or stipulations of the parties.

That affiant after filing his notice of appeal herein on July 19, 1944, retained the services of attorney H. William Ihrig, who was apparently familiar with the denaturalization proceedings at Milwaukee of which this case was one, inasmuch as said attorney had represented a number of the other defendants as attorney or counsel, but that said affiant was unable to pay for the services of said attorney from his own means or income except as he has received donations in trust for the payment of such expenses of appeal as would be covered by such donations, and that affiant has a written understanding with said attorney restricting and limiting the amount to be paid to said attorney to the amount affiant has hopes of receiving from others to permit him to make such commitment inasmuch as affiant is without means to do so on his own behalf;

That affiant has paid to his said attorney the premium for the first year on the cost bond of $250 filed with the clerk of the above court on July 22, 1944, from his own funds and the further sum of $250 received from others in trust as above mentioned for application on the purchase of the transcripts of testimony necessary to perfect the record on appeal, but that affiant is advised by his said attorney that said $250 will not cover the cost of the entire transcripts [fol. 75] as said attorney deems necessary on said appeal; that in connection therewith said attorney advised the client that the clerk's costs for certifying the transcript of testimony less than the whole would exceed in excess of $250 without relationship to such folio costs for comparing other portions of the record and without reference to that incidental to the exhibits, if less than an entire exhibit is used, and that in connection with such appeal affiant has been advised by his said attorney that it would be more economical to obtain the entire transcripts of said testimony and transmit the entire exhibits referred to therein than to abstract the same and pay the folio costs to the clerk in compliance with the rules of the court;

That affiant is without means to obtain such transcripts and also to pay such folio costs and that he is unable to pay either of them from his own means or income;

That affiant has been advised by his said attorney above referred to that said attorney believes that affiant is entitled to the redress he seeks in such appeal;

That affiant believes he is entitled to the redress he seeks in such appeal seeking to vacate and set aside said judgment of July 7, 1944, cancelling certificate of naturalization #4188490 issued to affiant by the Clerk of the Circuit Court of Milwaukee County on April 13, 1937, and obtaining the dismissal of the complaint in this action or of obtaining a new trial, because of error in said judgment and because of error in said trial and the proceedings leading thereto;

That because of affiant's poverty, as aforesaid, affiant is unable to pay the costs of said appeal other than giving the security for costs to the defendant as is now on file therein, and that because of such poverty of affiant, he is unable to prepay the fees or costs or to prepay for the printing of the record in the appellate court or to give security therefor, upon such appeal, to the U. S. Circuit Court of Appeals for the Seventh Circuit or in connection with any possible appeal or cross-appeal therefrom to the United States Supreme Court;

[fol. 76] Affiant has omitted from setting forth as a thing of value an old T. M. E. R. & L. Company street car sweeper purchased by him at Cedarburg a number of years ago for about $35. and placed upon leased ground and converted into quarters useable for summer cottage purposes. This is located about one mile north of Hamilton, Wisconsin, on a side road running to the Milwaukee River from the old Green Bay Road. The lease calls for $15. a year and requires consent of the lessor for transfer. This may be removed by affiant but because its removal would be more costly than its value or the proceeds of any removal, it has not been deemed to be an asset of value although it is an item of personal property owned by affiant.

That affiant is impoverished as set forth in this affidavit and does not have any cash or any trust funds with which to pay said costs and fees or to prepay for the printing of the record in the appellate court, or any assets which can be converted into cash and still permit affiant to pay the disbursements for perfecting the appeal record, other than services which this appeal will require, in addition to the costs and fees and prepaid expenses herein sought to be avoided due to his impoverishment, which impoverishment also prevents affiant from giving security for such costs upon such appeal.

That affiant is advised by his attorney above mentioned that an appeal in this case will be rendered an impossibility

because of affiant's in-ability to bear the cash disbursements required therefor, unless affiant is permitted to conduct his appeal from this point in forma pauperis.

Paul Knauer.

Subscribed and sworn to before me this 28th day of August, 1944. G. S. Salentine, Notary Public, Milwaukee County, Wisc. My commission expires June 27, 1948. (Seal.)

[File endorsement omitted.]

[fol. 77] In United States District Court

[Title omitted]

Motion for Order Denying Application for Order Granting Leave to Prosecute Appeal in Forma Pauperis; Filed August 30, 1944.

Upon all of the records, files and proceedings had herein; upon defendant's application for an order to prosecute an appeal in forma pauperis; upon the affidavit of Carl R. Becker, Assistant United States Attorney, hereto annexed; and upon such testimony as the Court may hear upon the issues thereby joined; plaintiff moves the Court for an order denying defendant's application for an order to prosecute an appeal in forma pauperis, on the following grounds:

1. That the defendant has heretofore given a cost bond with security which was approved by the Judge of the above-named court during the time allowed for appeal, which cost bond is in the penal sum of $250.00, and that consequently, under and pursuant to the provisions of Section 832 of Title 28, United States Code, the defendant is not entitled to proceed in forma pauperis; and that an order of the above-named court permitting the defendant to appeal in forma pauperis would be without authority, force or effect.

2. That the affidavit of the defendant, Paul Knauer, upon which said application for an order to prosecute defendant's appeal in forma pauperis is based, does not state

facts sufficient to entitle the defendant to appeal in forma pauperis.

[fol. 78] 3. That defendant's affidavit in support of said motion to proceed — forma pauperis is inadequate and insufficient in that the allegations thereof are uncertain and relative; and that the allegations thereof fail to state absolutely and with that certainty required by law that the defendant because of his poverty is unable to pay the costs of said appeal, or to give security for the same.

4. That the defendant is financially able to pay for the costs of said appeal, and is able to give security for said costs.

5. Upon information and belief, that the defendant has solicited from a great number of persons in Milwaukee County, funds and contributions to enable him to prosecute said appeal, which funds, upon information and belief are in the possession of the defendant, or other persons for and on behalf of the defendant; and that the defendant in his supporting affidavit has made an inadequate accounting of said funds.

Dated this 30th day of August, 1944.

Carl R. Becker, Assistant United States Attorney.

To: Mr. H. William Ihrig, Attorney for defendant and appellant, 759 North Milwaukee Street, Milwaukee 2, Wisconsin.

[fol. 79] In United States District Court

[Title omitted]

Affidavit of Carl R. Becker—Filed August 30, 1944

State of Wisconsin,
Milwaukee County, ss.:

Carl R. Becker, being duly sworn, upon oath deposes and says that he is an Assistant United States Attorney, and makes this affidavit in response to, and in opposition to the motion of the defendant for an order permitting him to prosecute an appeal in forma pauperis; that affiant makes this affidavit on personal knowledge and information, and

the official records of the Federal Bureau of Investigation coming into his hands as Assistant United States Attorney.

1. That annexed hereto and marked Exhibit "A" is a copy of a mimeographed appeal widely circulated by the defendant, and caused to be circulated by the defendant, in and about the City of Milwaukee, soliciting funds and contributions to enable him to finance his said appeal.

2. That annexed hereto and marked Exhibit "B" is a mimeographed circular prepared by the defendant, and widely circulated by the defendant, and caused to be circulated by the defendant during the month of July, 1943, which circular affiant verily believes was distributed and circulated by the defendant, and caused to be circulated by [fol. 80] the defendant, in and about the City of Milwaukee to win the moral and financial support of certain persons residing in said area, on behalf of the defendant in connection with his defense of the above-captioned action.

3. That this affidavit, and annexed exhibits are submitted to the Court to establish the fact that the defendant has made a wide appeal to certain persons residing in Milwaukee County for donations, contributions and funds to enable him to defend the above-entitled action and an appeal therefrom.

4. That the defendant has failed to account to the Court concerning his activities in regard to said solicitations, the identity of persons engaged by the defendant, or acting in his behalf in the solicitation of said funds, and the existence of funds in the hands of the defendant, his attorney, or other persons acting on behalf of the defendant; nor has the defendant accounted to the Court concerning pledges or promises of financial support, upon which the defendant may reasonably rely to defray the costs and expenses of his appeal.

Carl R. Becker.

Subscribed and sworn to before me this 30 day of August, 1944. Theodora E. Schwaab, Notary Public, Milwaukee County, Wisconsin.

[fol. 81] EXHIBIT "A" TO AFFIDAVIT

The Knauer Case

Never in German American history of Milwaukee a man has been more persecuted for his outspoken utterances in the interest of every man, woman or child of German descend than

Paul Knauer.

There is not a single person of German extraction in Milwaukee who has not heard or read about the hundreds of threatening telephone calls he has received during the past *five years* with the definite threat to "bump him off and blow his place of business up," with extortion threats, with threats to each and every member of his family.

Every one knows that an entire show window could be used for exhibition of threatening letters received from the same source for the last five years.

The worst venom *n* has been heaped upon the man and his entire family because he knows the pulse and heartbeat of each and every German American in this City and tries to help them against persecution, loss of work and chicanery caused by war hysteria.

Every one knows that Knauer's business, by his unselfish fight against German American persecution in this City, has been affected to such an extent that he can barely make his living.

In order to liquidate this man, the United States District Attorney, represented by Carl R. Becker, an assistant, the son of the president of the Bayrischer Krankenunterstuetzungsverein, has instituted a court procedure for denaturalization and has succeeded in obtaining a court order for cancellation of his citizenship.

And how did the district attorney succeed?

By the vilest, dirtiest, filthiest method, by introducing fabricated, falsified and perjured testimony, especially that of Mrs. Clara Merten, the government's principal humbug witness.

They are trying to fool the German Americans in Milwaukee again. They consider them dumb enough that they would not recognize the biggest fraud which was perpe-

trated on the United States District Court in Milwaukee by false testimony.

German Americans. Do not get fooled. The Knauer case means You and every member of your family. Not Knauer, but the entire German American minority is on trial.

[fol. 82] Therefore help Knauer to finance his appeal. Help him to fight back in a higher court and expose the foul tricks used in the United States District Court.

To help Knauer means to fight for clean Americanism.

Communicate with Knauer at 729 West Center Street, Tel. Concord 4764.

[fol. 83] EXHIBIT "B" TO AFFIDAVIT

Germanus Americanus

Dedicated to the martyrs of the mass persecution of German Americans in Milwaukee

Milwaukee, July 1, 1943.

Definitions:

1. An axman is one who has been defeated by democratic procedure, but appointed in spite of it and who has to chop wood whether he likes it or not.

2. The 8th world wonder is the quashing of a motion in U. S. District Court presented by the office of the U. S. District Attorney in the presence of "government counsel."

3. A countermotion filed by a defendant in a denaturalization case is like a mosquito. Therefore shake it off or catch it before it stings.

To defendant X:

You may attend your own hearing and watch the performance of your attorney, if there is any. The presence of 25 defendants in the same court room will not be considered a secret meeting. Secret meetings are held on the other side of the fence. They are called pre-legal conferences. No. You cannot buy a ticket to attend one of these meetings.

Schneiderman Case: Dear Russian:

Though the decision of the U. S. Supreme Court states that "our relations with Russia, as well as our views regarding its government and the merits of Communism are immaterial to a decision of this (denaturalization) case," we would like to see a judge who would courageously express corresponding ideas in a denaturalization procedure of German Americans.

To Mr. M. B. in re: Judge Duffy:

You asked whether the judge has shown bias and prejudice and discrimination and you refer to the statement of [fol. 84] the Milwaukee Journal of May 26, 1943, where Judge Duffy "questioned the *Italians, Rumanians and Hungarians* in a group, calling upon each applicant to answer questions as to whether they were purchasing war bonds or performing other war service, whether they had children in the armed forces and whether they were corresponding with their relatives in their native lands."

"*The Germans*, however, were admitted to the courtroom *singly* and Judge Duffy required each to swear that he had never been a member of the German-American bund or other alleged anti-American societies. He also inquired whether the German Aliens had ever visited Camp Hindenburg, the bund Camp near Grafton; when they had last visited Germany and, in cases where the aliens had lived in the United States for 50 years or so, the judge demanded to know why they had waited so long in applying for citizenship."

We believe your question is a highly insolent and impertinent one.

How could Judge Duffy have acted otherwise? He was appointed under the New Deal Administration.

How dare you to claim that he is biased and prejudiced?

He certainly likes the German Americans because he was elected by them before he was defeated as Senator. Furthermore, none of the attorneys of the various defendants in the denaturalization cases has ever filed a writ of prejudice against him on the basis of his judicial acts and utterances. If they don't, and they should know the law, how dare you to question his impartial and unbiased judgment?

Governor Goodland. Mr. ABC.

You are right. He never would have interfered in behalf of *the thousands of German Americans in his own state*, though their homes have been searched unlawfully and their property has been seized unlawfully and their bank accounts have been impounded without due process of law and though they have lost their jobs without stated reasons. He would not assist them because he knows they are only German Americans who are peaceful, taxpaying, never fomenting strikes, nor causing trouble, because he thinks they will vote for him anyhow again, even if they are kicked like dogs and because it would interfere with the war effort.

But of course the 50 motorists from Chicago might gang together and cause some political trouble to the governor. If he acts in this case, it would not interfere with our war effort.

[fol. 85] *FBI.* Dear Q:

The article in question has been printed in the Chicago Tribune of June 22, 1943 and reads in part as follows:

"Any of the innocent parties arrested there, conscious of his innocence and his rights under the Constitution might have addressed the meddlesome little men somewhat as follows:

I am not violating the law, and if I were, the Constitution prohibits you from forcing me to testify against myself. It makes me secure in my person and effects against the intrusion you are now practicing. If you think I'm not telling the truth, it is your privilege to get the evidence against me and take me into court. Meanwhile, gentlemen, you can go to hell."

We leave it to your imagination whether this article refers to the unlawful seizures and searches and inquisitions in German American homes in Milwaukee as practiced by the FBI.

Senators LaFollette and Wiley. Mrs. SM:

Please be patient. We have seen a great number of letters which read:

"Your letter comes while Senator LaFollette is spending a few days at home in Wisconsin. On his return, I will be glad to bring this matter to his attention. Or

"Referring to your letter, I am enclosing a letter which is self-explanatory. As soon as I receive further word, I shall be glad, to advise you.

Yours for Victory, Alexander Wiley."

But, if you should never hear again from them, please do not cry. You are not the only one among the crowd. They are probably still in the middle of their wintersleep or occupied with some problems presented by some alien minded idiots.

You shall hear from them shortly before the next election when they want your vote. And then they are so nice and polite and speak even German, if it is only "Prosit."

They have no understanding for the fact that your husband lost his job and that he cannot get another one. They cannot see your problem as that of a German American. Why don't you organize a luncheon club and invite them as speakers? It works. But, possibly, you would have to change your German name. A Russian name, at present, would be appropriate and is highly attractive. It intimates caviar, vodka and lots of Russian votes.

[fol. 86] *United States District Attorney.* Dear Max:

Do you realize what you have written? Of course the U. S. District Attorney does not only prosecute criminals, but protects also your rights as a U. S. citizen. You question the latter fact and ask us to state a single case where a German American who lost his job has ever been reinstated by the efforts of the office of the U. S. District Attorney.

We admit that we do not know of a single case ourselves, but if the radio says so we believe it must be so. However, we would advise you to get in direct contact with the office of the U. S. District Attorney.

They are nice fellows, if you do not step on their toes, but they are full of tricks.

Republicans. Dear Fred:

Republican organization leaders should pull no punches in dealing with the New Deal and its domestic policies. The mass persecution of German Americans started with the consolidation of 14 cases in an issue important enough to attract the entire German American vote. But please

steer clear from Wendell Wilke or his substitutes, who only betray the American public. Please keep people like Julius Heil out of any race, even that of senator. Heil has no understanding for the German American minority problem as he did not even use his influence and efforts as governor to have his faithful gardener released, a German alien, though he was served by him twelve of his most productive years, and should have vouched for his good moral character.

Our Predictions in the denaturalization cases in Milwaukee:
Hollywood-43:

In spite of the Schneiderman decision, not a single one of the 14 pending cases will be dismissed by Judge Duffy by order of Washington. The 14 defendants will become the victims of a farcial judicial procedure.

[File endorsement omitted.]

[fol. 87] In United States District Court

[Title omitted]

Supplemental Affidavit of Paul Knauer. Filed August 31, 1944

State of Wisconsin,
Milwaukee County, ss:

Paul Knauer, the defendant and appellant in the above entitled action, being first duly sworn, on oath deposes and says that he makes this supplemental affidavit in further support of his application in the above entitled appeal for leave to prosecute said appeal to the United States Circuit Court of Appeals for the Seventh Circuit in forma pauperis under Section 832 of Title 28 of the United States Code and the laws in such case made and provided.

That affiant amends his original affidavit herein relative to cancellation of five of the insurance agency contracts as being cancelled since February 1943 due to the facts that four were cancelled between March 3, 1942 and the commencement of this action in February 1943 by letters dated March 3, 1942, March 3, 1942, August 11, 1942 and August

19, 1942, and that one additional insurance agency contract was cancelled shortly prior to the original affidavit to which this is a supplement.

That with respect to life insurance business of which affiant was or is agent, he previously represented the Mutual Trust Life Insurance Company of Chicago, Illinois, which agency was terminated by letter dated August 11, 1942, effective September 11, 1942, and that the renewal commissions received by affiant from August 1943 to July 1944 inclusive was only the gross amount of $33.85, of which the July 1944 amount was $2.51; and that while affiant now [fol. 88] represents one life insurance company as an agent, and that from the time such agency was obtained in the spring of 1944 to the present time affiant has only received the total amount of $18.45 as commissions.

Paul Knauer.

Subscribed and sworn to before me this 30th day of August, 1944. G. S. Salentine, Notary Public, Milwaukee County, Wisc. My commission expires June 27, 1948. (Seal.)

[File endorsement omitted.]

[fol. 89] IN THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WISCONSIN

Civil Action No. 955

UNITED STATES OF AMERICA, Plaintiff,

v.

PAUL KNAUER, Defendant

OPINION ON DEFENDANT'S MOTION FOR LEAVE TO FURTHER PROSECUTE APPEAL IN FORMA PAUPERIS—Filed August 31, 1944

By judgment of this court dated July 7, 1944, the order entered in the Circuit Court of Milwaukee County in 1937 admitting defendant to citizenship was revoked and set aside, and the certificate of naturalization which was issued to him was cancelled by reason of the fraud of the defend-

ant in obtaining same. An appeal has been taken by the defendant, and he has filed a bond for security of costs. On defendant's motion an order has been entered in this court staying execution of the judgment pending the appeal.

Defendant's motion now before the court is for leave to prosecute his appeal to the Circuit Court of Appeals from this point on in forma pauperis. By affidavit defendant states that he is unable to purchase the stenographic transcript of the testimony taken at the trial, or to pay for the printing of the record on appeal, or to provide security [fol. 90] therefor. Defendant proceeds pursuant to Title 28, U. S. C. A., Sec. 832.

There may be grave doubt whether the defendant can qualify under said section, because it is specifically limited to citizens of the United States. Since July 7, 1944, defendant has not been a citizen. The authorities have held that citizenship is a condition precedent to the allowance of an order such as requested by the defendant. *Austin* v. *United States*, 40 F. Supp. 777; *The Bennington*, 10 Fed. (2d) 799; *The Memphian*, 245 Fed. 484; *Bellchamcar* v. *Beaver*, 49 F. Supp. 544.

The judgment appealed from cancelled the defendant's citizenship. A stay of proceedings does not reverse, annul, or undo what has already been done. 4 C. J. S., pp. 1150, 1151. But where, as here, the very judgment from which the appeal is taken is the cause of the defendant being an alien, and as the defendant seeks by the appeal to test the validity and the correctness of that judgment, I do not choose to rest my decision upon the ground that the defendant is not a citizen of this country.

Defendant's motion is directed first to the cost of the transcript of the testimony. He states the court reporter informs him the cost of such transcript will be $500.00, and that from donations which he has solicited or otherwise received he has only $250.00 with which to pay such charge, and that he has insufficient funds or property to pay the balance. However, the statute contains no authorization to [fol. 91] furnish an indigent defendant with a copy of the transcript at public expense. *Miller* v. *United States*, 317 U. S. 192. As was said by the court in *United States* v. *Otis*, 18 F. (2d) 689, 690:

"* * * As the Congress did not grant to the court the power to authorize payment for transcripts of

testimony for poor persons, the court has no such authority. United States v. Fair, (D. C.) 235 F. 1015."

Defendant also seeks relief from the cost of printing the record on appeal. This is clearly within the jurisdiction of the appellate court which may allow submission on the original record and waive the printing of any part thereof. *Fulton National Bank of Atlanta* v. *Cormley*, 99 F. (2d) 464, 465.

An order may be entered denying the defendant's motion.

Dated at Milwaukee, Wisconsin, this 31st day of August, A. D. 1944.

(Signed) F. Ryan Duffy, Judge.

[File endorsement omitted.]

[fol. 92] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DENYING MOTION FOR LEAVE TO PROSECUTE APPEAL IN FORMA PAUPERIS—Filed September 1, 1944

The motion of the defendant for leave to prosecute his appeal to the Circuit Court of Appeals in forma pauperis having been heard by the Court on the 30th day of August, 1944; and the Court having rendered his opinion thereon on the 31st day of August, 1944, wherein it was directed that an order be entered denying defendant's motion;

Now upon application of Carl R. Becker, Assistant United States Attorney,

It Is Ordered that the motion of the defendant for leave to prosecute his appeal to the Circuit Court of Appeals from this point on in forma pauperis, be and the same hereby is denied.

Dated this 1st day of September, 1944.

F. Ryan Duffy, United States District Judge.

[File endorsement omitted.]

[fol. 93] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER STAYING EXECUTION OF JUDGMENT—Filed September 18, 1944

The defendant and appellant herein having heretofore filed his notice of appeal herein and the security for costs in connection therewith, and having heretofore filed his notice of motion to stay the execution of the judgment entered July 7, 1944, herein, pending the appeal, which motion heretofore came on to be heard, now on motion of H. William Ihrig, his attorney.

It Is Ordered that the provisions of the judgment heretofore entered herein on July 7, 1944, in favor of the plaintiff and against the defendant, be stayed herein pending the appeal of the defendant therefrom.

Dated at Milwaukee, Wisconsin, this 18 day of September, 1944.

By the Court,

F. Ryan Duffy, U. S. District Judge.

[File endorsement omitted.]

[fol. 94] IN UNITED STATES DISTRICT COURT

[Title omitted]

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY ON APPEAL—Filed September 12, 1944

The appellant intends to rely upon the contentions that the district court materially erred in the above action in the following respects:

1. In granting judgment revoking defendant's citizenship on the findings of fact and conclusions of law numbered I and II, dated May 25, 1944, and June 16, 1944, respectively herein.

2. In making its conclusions of law based on the respective findings of fact numbered I and II aforesaid.

3. In making its respective findings of fact numbered II dated June 16, 1944, in respect of the issues on the pleadings herein.

4. In making its respective findings of fact numbered I dated May 25, 1944, in respect of the issues on the pleadings herein and in respect of the evidence presented at the consolidated trial had herein,

5. In admitting the Government's testimony and exhibits over the objections made by or on behalf of this defendant in the consolidated trial.

6. In failing to grant the motions made by or on behalf of defendant in the consolidated trial to strike out specific government testimony and exhibits, as shown by the record.

7. In considering and failing to exclude from the record herein and consideration all testimony of events subsequent to the date of defendant's naturalization on April 13, 1937.

[fol. 95] 8. In admitting and failing to exclude from the record and its consideration all testimony and exhibits in the consolidated trial from this defendant's case which were obtained by unlawful search and seizure by U. S. Government agents from the national Bund headquarters at New York or from the Bund employes, officers, agents, or members, and moved to be surpressed herein when such facts were made known.

9. In considering from the record any findings relating to the Friends of New Germany and of the German-American Bund and of its predecessor and successor organizations and of their respective members, in defendant's case inasmuch as defendant was not a member of either organization.

10. In granting plaintiff's requested order for a consolidated trial with that of 13 other defendants, which order was dated June 16, 1943.

11. In granting plaintiff's requested order permitting rebuttal evidence by the 13 other defendants, in defendant's record, in said order of June 16, 1943 providing for a consolidated trial of certain issues in the cases of 14 defendants as to their separate cases.

12. In making the full consolidated trial record in said 13 other actions to be a part of the record in this action.

13. In permitting evidence of the alleged history of the Bund from 1924 to 1942 in defendant's case.

14. In allowing evidence in defendant's case of the alleged secret nature, aims and purposes of the Bund between 1924 and 1942, contrary to the expressed nature, aims and purposes of such organization.

15. In allowing evidence in defendant's case of the alleged amalgamation of the Bund with alleged American branches of the National Socialist German Workers party from and after June 1933.

16. In allowing evidence in defendant's case that the Bund was allegedly organized and conducted for German National Socialist purposes between 1924 and 1942.

[fol. 96] 17. In allowing evidence in defendant's case that Bund was connected with and controlled in thought and action by the Nazi party in Germany between 1924 and 1942.

18. In allowing evidence in defendant's case that the Bund modelled itself upon and imitated the Nazi party of Germany in its organization and in its activities between 1924 and 1942.

19. In allowing evidence in defendant's case that between 1924 and 1942 the Bund stood for and taught philosophical and political propositions of racial homogeniety and racial supremacy and of divided or double citizenship, inconsistent and in conflict with the naturalization oaths of allegiance of American loyalty and allegiance.

20. In allowing evidence in defendant's case that Bund in 1924 and 1942 was operated under and fostered a leadership principle of organization and loyalty and allegiance to the leader of the German nation inconsistent with and at odds with the democratic concept of government.

21. In allowing evidence in defendant's case that the Bund attempted to create dissension among the people of the United States by urging racial and religious discrimination among them.

22. In allowing evidence in defendant's case that Bund for a number of years prior to Pearl Harbor in 1941 published and distributed its newspaper organs in German and English in the United States, (a) to disseminate in

the philosophy and precepts of German national socialism, (b) to foster in it readers an allegiance to Germany, (c) to incite in its readers a contempt for democratic institutions and the government of the United States, (d) which newspapers were Nazi inspired, and (e) whose contents in a large part were material secured by the Bund from propaganda agencies in Germany controlled by the Nazi party there.

23. In allowing evidence in defendant's case that the Bund between 1924 and Pearl Harbor in 1941 received Nazi propaganda material from organizations in Germany and disseminated the same through books, pamphlets and leaflets distributed by Bund members over the United States at headquarters and at Bund camps and elsewhere.

24. In allowing evidence in defendant's case that the Bund [fol. 97] sponsored and arranged speaking tours for members of the German Nazi party sent to the United States to address Bund meetings and other gatherings on the philosophy of German national socialism.

24a. In allowing evidence in defendant's case that between 1934 and 1941 the Bund conducted camps at which German Nazi flags and paraphernalia were exhibited, Nazi literature and propaganda were displayed, distributed and sold and at which speakers expounded the theories of German national socialism and at which both adults and youths were allegedly taught the principles of German Nazism and exorted to be loyal to and preserve in their minds and lives the theories and philosophy of Germany over and above the theories and philosophies of the United States.

25. In allowing evidence in defendant's case that the Bund between 1924 and Pearl Harbor in 1941 sought to and did instill in its members an allegiance to Germany and to the Nazi party and its leaders, through the exhibition and use of such Nazi paraphernalia as the swastika and through the singing of such Nazi songs as the Horst Wessel song and through the display and repetition of slogans.

26. In allowing evidence in defendant's case that within the Bund there existed a uniformed group known as the Ordnungs Dienst and that such uniformed group was allegedly patterned after the Nazi storm troopers of Germany

and that it was allegedly a militant body of selected Bund members training in military techniques and designed to serve as a nucleus for larger and future military organizations if and when the alleged secret and hostile aims of the Bund were accomplished in the United States, and that it was allegedly used by the Bund to spread the secret philosophies of the Bund and the expressed philosophies of German national socialism, and to distribute literature and propaganda of German origin and thought.

27. In allowing evidence in defendant's case that between 1934 and Pearl Harbor 1941 the Bund organized and conducted a youth group which was allegedly modelled upon the Hitler Youth organization in Germany and that members of such youth group were taught the precepts of the Nazi philosophy and that they were taught to keep Germany and the German leaders and so-called German ideas foremost in their minds and to be loyal to them, and that they were taught to be German rather than American.

[fol. 98]

28. In allowing evidence in defendant's case that from and after 1935 there was a group within the Bund known as the Prospective Citizens League made up of German Nationals who had filed declarations of intention to become American citizens and that this division was created for the purpose of organizing and keeping them within the Bund and in order to prevent assimilation of such German Nationals in American life and to foster in them an adherence to the Nazi cause and to German National Socialism as allegedly represented by the Bund in this country.

29. In allowing evidence in defendant's case that there was within the Bund a group known as sympathizers and that this designation was devised to cancel the affiliation of certain persons with the Bund and that such sympathizers were in fact members of the Bund engaged in all the activities of the Bund and enjoying all the rights and privileges pertaining to Bund membership.

30. In allowing evidence in defendant's case that there were branches of the Bund at Milwaukee and at Kenosha and at Sheboygan, Wisconsin, and that these branches or units were militant branches of the Bund and that they had identical objects and purposes with the other Bund branches and that these Wisconsin branches were controlled by and were subordinate to the national leadership and that these

Wisconsin branches taught and preached the aforementioned racial homogeneity and supremacy theories or propositions and promoted and disseminated the same literature and that the Milwaukee branch owned and controlled a typical Bund camp at Grafton, Wisconsin, and sang the same songs and used the same slogans.

31. In allowing evidence in defendant's case that the Milwaukee branch of the Bund sought to win to its cause and objects old German-American organizations within Milwaukee county and elsewhere in the state of Wisconsin, first, by infiltration, and later, when that failed, by means of the German-American Citizens Alliance, a Wisconsin non-stock corporation.

32. In allowing evidence in defendant's case that between 1924 and Pearl Harbor 1941, the aims and purposes and organization of the Bund were then subversive of the govern-[fol. 99] ment of the United States and contrary to the precepts of our American constitution.

33. In not requiring the Government to offer evidence found by it of defendant's life which reflects or tends to reflect loyalty on the part of the defendant to the United States, instead of permitting a negative evidentiary finding thereon based on its failure so to do, so as to have the same prejudicially incomplete.

34. In making the respective findings of fact and conclusions of law in part I of the Findings of Fact and Conclusions of Law in this case because the evidence of probative value in the record of the consolidated trial did not support the said respective findings or conclusions by clear, unequivocal and convincing evidence beyond a reasonable doubt.

35. In making any finding of fact and conclusion of law in this case based thereon other than as to facts existing on April 13, 1937, and for the 5-year period immediately prior thereto.

36. In admitting any evidence in this case other than those facts of probative value existing on April 13, 1937, and for the 5-years immediate prior thereto.

37. In not delaying the commencement of the consolidated trial in this action until after the hostilities in our war with Germany ceased, due to the wartime passions and fears, of common knowledge, existing at Milwaukee, Wisconsin, at the commencement of such consolidated trial and during the same, preventing the calling of willing witnesses on pre-war subjects involving association with the Bund or with the defendant, both charged with disloyalty, and avoiding the undue zeal and prejudice against defendant of plaintiff's witnesses, under the stress of and need for wartime unity, thereby preventing defendant from having ample right to prove his defense to this action and from having ample right to test plaintiff's case, defendant thereby not having ample right to the use of reason and being thereby precluded from having a fair trial protecting defendant's substantive rights.

38. In not submitting the issues out of chancery in this civil action to the judgment of a jury.

39. In permitting prejudicial surprise of defendant as to the preliminary and subsidiary issues of fact to be litigated under the pleadings, in the consolidated trials.

[fol. 100] 40. In permitting trial to be unduly delayed and burdened and not to be duly expedited by the prejudicial permission and admission of extraneous issues therein, and in permitting therein cumulative evidence to be offered by plaintiff of a purely consistent type, and without relevancy to the issues in defendant's action, and by extended background material being permitted in defendant's record to become a prejudicial vehicle against defendant, and by irrelevant facts being permitted to condition the admissibility of evidence prejudicially to the defendant in the consolidated trials.

41. In the excessive scope of evidence of preliminary and subsidiary facts permitted plaintiff at the consolidated trial which did not give certainty to the substantive facts and law at issue, to the prejudice of defendant.

42. In making illogical inferences of fact from competent evidence of probative value to the substantive issues under the pleadings, in reaching the findings of fact and conclusions of law in part No. I thereof and in reaching the con-

clusions of law from the findings of fact found in part II thereof, and in entering the judgment herein against the defendant.

Dated at Milwaukee, Wisconsin, September 12, 1944.

Yours, etc., H. William Ihrig, Attorney for defendant-appellant Paul Knauer, Suite 307 at 759 N. Milwaukee St., Milwaukee (2), Wisconsin.

Addresed to J. P. Cronin, U. S. Attorney at Milwaukee, Wis., and Carl R. Becker, Assistant U. S. Attorney at Milwaukee, Wis.

[File endorsement omitted.]

[fol. 101] Copy

Department of Justice

United States Attorney

Eastern District of Wisconsin, Milwaukee

August 6, 1943

Mr. B. H. Westfahl, Clerk of U. S. District Court, Milwaukee, Wisconsin.

Dear Sir:

Please be informed that Judge Duffy recently set the fourteen consolidated "denaturalization" cases for trial on September 21, 1943, and has set the date of September 10th, next, for pre-trial conference.

Also be notified that from and after August 20, 1943, the Government's exhibits, relative to the national organization of the German American Bund and its affiliated organizations, will be open for inspection to the attorneys of record or any defendants not represented by counsel, in Room 362, Federal Building.

This office will write each attorney, notifying him of the above.

Respectfully, B. J. Husting, United States Attorney.

By (s/g/d) Carl R. Becker, Assistant U. S. Attorney.

EB

[fol. 102] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF CARL R. BECKER—Filed Sept. 18, 1944

STATE OF WISCONSIN,
Milwaukee County, ss.:

Carl R. Becker, being duly sworn, on oath deposes and says: That he is an Assistant United States Attorney, and as such conducted the trial of the above cause on behalf of the plaintiff:

1. That on August 12, 1943, he caused the original of the annexed letter to be sent to the defendant Paul Knauer.

2. That on August 6, 1943, the Honorable F. Ryan Duffy in chambers set the above cause and others consolidated therewith for trial on September 21, 1943, and for pre-trial conference on September 10, 1943, and at the same time directed the plaintiff to make available to the several defendants in the said cases consolidated for a limited purpose, for inspection, the exhibits which the plaintiff would introduce at said consolidated hearing; that in obedience to said direction affiant sent a letter to the Clerk of the above-named Court, advising him of the Court's directions, which letter was dated August 6, 1943; and that pursuant to the directions of the Honorable F. Ryan Duffy, and in obedience thereto, affiant caused the annexed letter to be written to and delivered by mail to the defendant.

[fol. 103] 3. That from and after August 20, 1943, plaintiff's exhibits received in evidence, marked 1 to 132-A, were available for inspection and examination by all defendants and their counsel as well as the defendant Paul Knauer, in Room 362 of the Federal Building, Milwaukee, Wisconsin, which room is the library of the office of the United States District Attorney.

4. Affiant further states that from and after August 20, 1943, the defendant Paul Knauer availed himself of said opportunity to inspect and examine said exhibits in Room 362 of the Federal Building; and did examine said exhibits on frequent occasions after August 20, 1943, and before

September 21, 1943, when said hearing on the consolidated issue began.

Carl R. Becker.

Subscribed and sworn to before me this 18th day of September, 1944. Theodora E. Schwaab, Notary Public, Milwaukee County, Wisconsin.

[fol. 104] Copy

August 12, 1943.

Mr. Paul Knauer, 2711 West Lisbon Ave., Milwaukee, Wisconsin.

In re: United States of America v. Paul Knauer.

DEAR SIR:

Judge Duffy has set the above cause and other consolidated cases for trial on September 21, 1943, and the pre-trial conference September 10th, next.

The government exhibits on the national character of the Bund may be examined on and after August 20th in Room 362 of the Federal Building.

Very truly yours, B. J. Husting, United States Attorney, by Carl R. Becker, Assistant.

MH

[File endorsement omitted.]

[fol. 105] Copy

Milwaukee, Wis., September 11, 1943.

Mr. Paul Knauer, 2611 W. Lisbon Ave., Milwaukee, Wis.

In re: United States of America vs. Paul Knauer, Civ. Act. 955

DEAR SIR:

Pursuant to rule 21-A of this court, I am herewith enclosing copy of order entered September 11, 1943 in the above entitled cause.

Very truly yours, (s/g/d) B. H. Westfahl, Clerk.

BHW:RM.
Encl.

[fol. 106] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO COMPLAINT—Filed November 12, 1943

And now comes the plaintiff, by Carl R. Becker, Assistant United States Attorney, with leave of the Court first had and obtained, amends its Bill of Complaint herein, so that Paragraph Eight (8) of said Bill reads as follows:

That by reason of the foregoing, the said Certificate of Naturalization was procured by the said Paul Knauer fraudulently and therefore illegally and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof, and that said Certificate of Naturalization is subject to cancellation.

Carl R. Becker, Assistant United States Attorney for the Eastern District of Wisconsin.

[fol. 107] IN UNITED STATES DISTRICT COURT

Civil Action No. 955, 831, 948, 960, 965, 952, 959, 963, 966, 961

[Title omitted]

ORDER

Upon the annexed petition and motion of Carl R. Becker; the Court being advised that Attorney William Ihrig, representing the defendants at the consolidated hearing, has no objection to the entry of said order as prayed,

It Is Ordered that leave be granted to the plaintiff to withdraw from the records of this court, until the further order of this court, plaintiff's exhibits No. 24 and 64.

It Is Further Ordered that the plaintiff be permitted to file a photostatic copy of Exhibit 64 in its place and stead.

Dated February 7th, 1944.

s/g/d F. Ryan Duffy, District Judge.

[fol. 108] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

Civil Action No. 955, 831, 948, 960, 965, 952, 959, 963, 966, 961

[Title omitted]

PETITION—Filed February 7, 1944

The petition of Carl R. Becker, Assistant United States Attorney, respectfully represents:

That the Department of Justice, Washington, D. C., is desirous of obtaining the following exhibits introduced by the plaintiff at the consolidated hearing of the above cases, namely:

Plaintiff's exhibit No. 24, being "Year Book of the German-American Bund for the year 1937", and plaintiff's exhibit No. 64, being the original charter issued by the German-American Bund to Milwaukee Unit No. 14.

That plaintiff's exhibit No. 24-A, being an English translation of Exhibit 24, has been introduced in evidence and will remain available as evidence.

That plaintiff seeks leave of court to file in place of Exhibit No. 64 a photostatic copy of said Exhibit 64.

Wherefore, petitioner prays for leave of court to withdraw exhibits numbered 64 and 24, until the further order of this court; and for leave to file a photostatic copy of exhibit No. 64 in place and stead of said Exhibit 64.

Carl R. Becker, Assistant United States Attorney.

[fol. 109] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION RE EXHIBITS—Filed September 18, 1944

It Is Stipulated by and between Appellant and Appellee that the designated exhibits forming part of the record on appeal herein be not transmitted to the Appellate Court with the Transcript of Record, but that the respective parties now having custody of said exhibits retain the same, available for the use of both parties in the preparation of

briefs; and that said exhibits be lodged with the clerk of this court at the earliest practicable date before the hearing of said appeal, then to be certified by the clerk of this court and transmitted for filing with the Transcript of Record on Appeal.

Dated September 18, 1944.

H. William Ihrig, Attorney for Appellant. Carl R. Becker, Attorney for Appellee.

[File endorsement omitted.]

[fol. 110] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO CERTAIN FACTS—Filed September 29, 1944

It is hereby stipulated and agreed that in lieu of the appellant's supplemental designation dated September 19, 1944, the following facts appear in the record of this appeal, to wit:

1. That the complaints in the thirteen civil actions consolidated with this action for partial trial under the order of limited consolidation dated June 16, 1943, were substantially identical in form and substance with the complaint in this action; they differed as to allegations concerning date of entry into the United States, date of petition for naturalization and date of naturalization, the details of which are set forth under Paragraph 4 hereof.

2. That the Amendment made to the Complaint in this action was likewise made in said thirteen cases consolidated herewith for trial on a limited issue.

3. That this action and said thirteen others were each at issue when brought on for said limited consolidated hearing as was had herein.

4. That the names of the defendants in said consolidated actions, the filing number of their respective civil actions, the date of their entry into the United States, the date of their petition for naturalization, and the date of their re-

spective naturalization, as alleged in said complaints, are as follows:

[Folio 111]

Name	Date of Entry	Date of Petition	Date of Naturalization
1. Paul Knauer (965)	April 7, 1925	Nov. 20, 1936	April 13, 1937
2. Hans Behnke (831)	Sept. 12, 1921	Mar. 9, 1928	Sept. 12, 1928
3. John Fred Falk (948)	May 27, 1929	August 30, 1938	Dec. 13, 1938
4. Herbert Poetzsch (960)	April 23, 1928	April 4, 1934	July 10, 1934
5. Ewald Schneider (965)	Dec. 26, 1923	June 10, 1932	Sept. 26, 1932
6. Karl Kalusok (952)	Sept. 27, 1930	Aug. 29, 1938	Dec. 13, 1938
7. Henry Pfaff (959)	April 19, 1926	July 7, 1932	Nov. 15, 1932
8. Emil Schellong (963)	Oct. 1, 1921	July 9, 1937	Oct. 13, 1937
9. Joseph Wippl (967)	Jan. 2, 1924	Jan. 23, 1929	May 9, 1929
10. William Greeb (949)	Aug. 22, 1923	Mar. 26, 1929	Dec. 10, 1929
11. Otto Kettner (954)	Aug. 3, 1925	April 23, 1931	Sept. 17, 1931
12. Erich Kaufmann (943)	Oct. 10, 1923	Nov. 18, 1930	April 14, 1931
13. Ludwig Soellner (966)	May 26, 1926	April 20, 1934	Oct. 2, 1934
14. Helmut Prause (961)	May 27, 1929	Oct. 11, 1937	Jan. 11, 1938

5. That in the majority of said consolidated cases the defendants served written interrogatories upon the plaintiff under Rule 33 of the Federal Rules of Civil Procedure seeking disclosure by the plaintiff of the proof upon which it would rely to sustain the allegations of plaintiff's complaint. These interrogatories were extensive and numerous. In each instance where said interrogatories were propounded, the plaintiff responded at length, setting forth the principal evidenciary facts upon which the plaintiff would rely; and in each instance the plaintiff, among other things, in substance responded, by written reply, that it would prove that the plaintiff in said case

(a) was affiliated with the Milwaukee Unit of the Friends of New Germany;

(b) the date of said affiliation;

(c) the activity of the defendant therein;

(d) That the Friends of New Germany changed its name in the year 1936 to German-American Bund;

[fol. 112] (e) That said organization was militant in advocating the doctrine of National Socialism as practiced by the Nazi Party in Germany; and further advocated, regardless of status of citizenship, the lack of attachment to the principles of the Constitution of the United States; and further advocated on the part of its adherents, an ill disposition to the good order and happiness of the United States; and further, that it encouraged, fostered, and demanded of its adherents supreme and unswerving allegiance and fidelity to the German Reich, all to the end that its adherents would

fail to support and defend the Constitution and the laws of the United States against all enemies, foreign or domestic.

6. That all interrogatories propounded in said consolidated cases were answered in writing by the plaintiff not later than three months before said consolidated hearing.

7. That no interrogatories were propounded to the appellee by appellant.

8. That appellant's supplemental designation dated September 19, 1944, be withdrawn from the records on appeal herein.

Dated at Milwaukee, Wisconsin, this 27th day of September, 1944.

Carl R. Becker, Attorney for Plaintiff-Respondent.
H. William Ihrig, Attorney for Defendant-Appellant.

[File endorsement omitted.]

[fol. 113] In United States District Court

[Title omitted]

Designation of Record on Appeal—Filed September 12, 1944

The defendant-appellant hereby designates the following portions of the record in the above entitled and numbered cause to be necessary for the consideration of the within appeal to the United States Circuit Court of Appeals for the Seventh Circuit:

1. Complaint for denaturalization of defendant, filed February 3, 1943.

2. Answer of defendant (other than that called preliminary answer) filed April 1, 1943.

3. Motion of plaintiff to consolidate 14 cases (including the within case) for purposes of trial, together with affidavit in support thereof and notice for hearing, filed May 12, 1943.

4. Answer of defendant in opposition to plaintiff's motion to consolidate, filed May 28, 1943.

5. Order granting plaintiff's motion to consolidate 14 cases for purposes of trial on certain issues, filed June 16, 1943.

6. Order following pre-trial conference, filed September 10, 1943.

7. Memo opinion and findings of fact and conclusions of law, No. 1 in common issues consolidated for trial, filed May 25, 1944.

8. Opinion and findings of fact No. 11 and conclusions of law, filed June 16, 1944.

9. Judgment cancelling certificate of naturalization No. 4188490 issued to defendant by Clerk of Circuit Court of Milwaukee, Wisconsin, filed July 7, 1944.

[fol. 114] 10. Motion of defendant to stay execution of judgment dated July 7, 1944, and notice, filed July 12, 1944.

11. Notice of appeal, filed July 19, 1944.

12. $250 cost bond on appeal, filed July 22, 1944.

13. Statement of appellee, filed July 25, 1944.

14. Order extending time to settle record on appeal and to file and docket same with U. S. Circuit Court of Appeals, Seventh Circuit, to September 7, 1944, filed August 28, 1944.

15. Application by defendant for leave to prosecute appeal in forma pauperis, and affidavit in support thereof, filed August 30, 1944.

16. Application by plaintiff for order denying defendant's application for leave to prosecute appeal in forma pauperis, filed August 30, 1944.

17. Supplemental affidavit of defendant in support of his application for leave to prosecute appeal in forma pauperis, filed September 1, 1944.

18. Opinion on defendant's application for leave to further prosecute his appeal in forma pauperis, dated August 31, 1944.

19. Order denying defendant's application for leave to prosecute appeal in forma pauperis, filed September 1, 1944.

20. Order staying execution of judgment pending appeal, granted July 24, 1944, and filed September 18, 1944.

21. Transcripts of testimony of consolidated trial on following days:

(a) September 21, 1943, pages 1-181.
(b) September 22, 1943, pages 182-367
(c) September 23, 1943, pages 368-549
(d) September 24, 1943, pages 550-719

(e) September 27, 1943, pages 720-843
(f) September 28, 1943, pages 844-998
(g) October 12, 1943, pages 999-1140
pages 1141-1437
(h) October 13, 1943, all filed September 12, 1944,

of which the original copy is requested to be forwarded as a part of the record on appeal

[fol. 115] 22. Original exhibits offered by plaintiff in consolidated trial and numbered 1 to 132a, respectively.

23. Original exhibits offered by defendants in consolidated trial and numbered:

(a) Pfaff exhibit E, being Milwaukee Sentinel clipping of January 13, 1938, entitled "Bund cleared in U. S. Probe."

(b) Pfaff exhibit F, being constitution of Bund (1937).

(c) Pfaff exhibit J, being Wisconsin New green flash sheet of June 28, 1937, showing German and Polish picnics.

(d) Pfaff exhibit N, being Department of State publication numbered 1853 entitled "Peace and War—United States Foreign Policy 1931-1941."

(e) Pfaff exhibit K, being June 1873 Atlantic Monthly Magazine containing article entitled "French Imbroglio of 1798" by James Paxton.

Dated at Milwaukee, Wisconsin, September 12, 1944.

Yours, etc., H. William Ihrig, Attorney for defendant-appellant Paul Knauer, Suite 307 at 759 North Milwaukee Street, Milwaukee (2), Wisconsin.

Addressed to: J. P. Cronin, U. S. Attorney at Milwaukee, Wis., and Carl R. Becker, Assistant U. S. Attorney at Milwaukee, Wis.

[File endorsement omitted.]

[fol. 116] IN UNITED STATES DISTRICT COURT

[Title omitted]

APPELLEE'S DESIGNATION OF ADDITIONAL PORTIONS OF THE RECORD—Filed Sept. 18, 1944

The plaintiff-appellee hereby designates the following additional portions of the record in the above-entitled cause to be contained in the record on appeal herein:

1. Letter of United States Attorney dated August 6, 1943, to the Clerk of the above-named Court, advising him of the availability of plaintiff's exhibits for inspection by defendant, etc.

2. Copy of letter of United States Attorney dated August 12, 1943, addressed to defendant Paul Knauer, advising him that plaintiff's exhibits were available for inspection, etc., together with affidavit thereto attached; each filed September 18, 1944.

3. Copy of letter dated September 11, 1943, addressed by the Clerk of the above-named Court to the defendant Paul Knauer, enclosing copy of court's order on pre-trial conference.

4. Plaintiff's amendment to complaint filed November 12, 1943.

5. Petition and Order Re Exhibits No. 24 and No. 64 on consolidated hearing.

Dated September 18, 1944.

Carl R. Becker, Assistant United States Attorney.

[File endorsement omitted.]

[fol. 117] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 118] [Caption omitted]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

No. 8676

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

PAUL KNAUER, Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of Wisconsin

MINUTE ENTRY—May 11, 1945

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel and on oral argument by Mr. H. William Ihrig counsel for appellant and by Mr. Carl R. Becker counsel for appellee, and the Court takes this matter under advisement.

[fol. 119] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

October Term, 1944—April Session, 1945

No. 8676

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

PAUL KNAUER, Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Before Evans, Sparks, and Minton, Circuit Judges.

OPINION—Filed May 29, 1945

MINTON, Circuit Judge.

The United States instituted proceedings under Section 338 of the Naturalization Act of 1940, 8 U. S. C. A. 738, to revoke for fraud and cancel the certificate of naturaliza-

tion issued to the defendant by the Circuit Court of Milwaukee County, Wisconsin. Judge Duffy, after an extended hearing conducted in his usual fair and considerate manner, sustained the complaint of the United States and revoked and cancelled the certificate of naturalization issued to the defendant on the ground that it was fraudulently and illegally procured, and entered judgment accordingly. From this judgment the defendant appeals.

There were similar petitions pending in the District Court against thirteen other defendants. An order was entered by the District Court consolidating for trial the common issue in all of the actions. It was the contention [fol. 120] of the Government that all of the defendants were members of the German-American Bund. The issues which were common to each case concerned the organization, aims and purposes, and activities of the Bund, its national and local subdivisions, predecessors and affiliates, including the Grafton Settlement League, Incorporated. For whatever it was worth, mere membership in the Bund affected each of the defendants identically the same. After the conclusion of the consolidated trial on the common issues, the claim of the Government against each individual defendant was tried separately. The District Court found in favor of thirteen of the defendants, and against the defendant, Paul Knauer.

The defendant contends that it was error to consolidate these cases on the common issues concerning the Bund. In the consolidation of cases, courts exercise a broad discretion. The court should not consolidate the trial, even where the court sits as a chancellor, in cases where the issues affecting various defendants are certain to lead to confusion or prejudice to any one or all of the defendants.

In the case at bar, the matters heard in the consolidated hearing were one and the same, and touched each defendant with exactly the same effect. There were no conflicting or confusing issues as between the defendants in the matter heard on the consolidation. The defendant represented himself at the trial and had the benefit of the able and experienced attorneys who represented the other defendants at the trial of the consolidated issues. At all times during the trial, Judge Duffy, with meticulous consideration for the rights of the defendant, guided and protected him throughout the entire proceeding. So fair

and judicial was his conduct that at the oral argument counsel for defendant paid his respects to Judge Duffy in this regard. The defendant had already paid his respects in an insolent, unwarranted attack on the Judge just a few months before the trial began.

Rule 42 (a) of the Federal Rules of Civil Procedure was designed and intended to encourage such consolidation where possible. This practice has been uniformly adopted by trial courts in similar cases. *United States* v. *Bregler*, 55 F. Supp. 837; *United States* v. *Braecker*, 55 F. Supp. 403; *United States* v. *Kusche*, 56 F. Supp. 201; *United* [fol. 121] *States* v. *Holtz*, 54 F. Supp. 63; *United States* v. *Sauter*, 54 F. Supp. 22.

We think it clear that Judge Duffy did not abuse his discretion in trying the cases together on the common issues concerning the Bund.

The defendant further contends that the evidence is not sufficient to sustain the Court's action. In such a case, the evidence must be clear, unequivocal, and convincing, and the court's findings of fact in such cases are not binding on the appellate court as in the ordinary case of review. *Baumgartner* v. *United States*, 322 U. S. 665, 64 S. Ct. 485, 88 L. Ed. 1155.

We have examined the immense record in this case and are of the opinion that it clearly, unequivocally and convincingly establishes that the naturalization certificate issued to the defendant by the Circuit Court of Milwaukee County, Wisconsin, was fraudulently and illegally procured; that before, at the time, and ever after, his taking the oath of allegiance to this country, the defendant was not attached to the principles of our Government and our Constitution, but was a thorough-going Nazi and faithful follower of the National Socialist party of Germany; that he did not in good faith forswear and abjure his allegiance to the Third Reich, and was before, at the time of his naturalization, and afterwards, a faithful follower of Adolph Hitler as leader of the Third Reich.

The clear, unequivocal, convincing evidence in this record shows the following. The defendant, Paul Knauer, was born at Saalfeld, Germany, March 3, 1895. After a high school training, he attended Leipzig University for one semester. Then he joined the German Army in World War I and rose to the rank of top sergeant. During the war he was taken prisoner and decorated with the Iron

Cross. After the war he studied law and economics for three years at Leipzig-in-Halle in Germany. The defendant arrived in the United States in April, 1925. On December 4, 1929, he filed his declaration of intention to become a citizen. In 1934 he visited Germany for several months and contacted certain Nazi leaders on this visit. He told friends that he was proud of the fact that he had met Hitler on this trip. On November 20, 1936, he filed his petition for naturalization in the Circuit Court of Mil- [fol. 122] waukee County. It was in the usual form and he took the usual oath of allegiance on April 13, 1937.

The aim and purpose of the German-American Bund and all its predecessors in this country were to unite all Germans with nationalistic leanings and to convince them that Hitler was the leader of Germans everywhere. The Bund proclaimed and supported the principles and purposes of the National Socialist party of Adolph Hitler, which centered around the Nazi concepts of leadership, superiority of the German race, and the totalitarian power of the leader.

The Bund was directly affiliated with the National Socialist party in Germany. The Nazi holidays, especially Hitler's birthday, were always observed by the Bund. Trips to Germany were arranged for Bundists to appear before the leading Nazis and to meet Hitler. The basic qualifications for membership in the Bund were that the applicant should be of Aryan descent, free of Jewish or Negro blood, believe in the leadership principle, and be an adherent to the Nazi world philosophy, German nationals and American citizens of German descent were eligible for membership in the Bund. There had been 25,000 German veterans of World War I who had migrated to Milwaukee as the defendant had done. In 1935 or 1936 the order came from Germany to the Bund leadership in this country to have German nationals retire from the organization. At the same time the Nazi salutation, "Heil Hitler," which had been modified to "Heil," or "Sieg Heil," was ordered to be displaced by the salutation, "Free America." This was only to mislead the public, as evidenced by a speech of Fritz Kuhn, the Bundesfuehrer.

The Bund meetings always displayed in the place of honor the swastika flag of the Third Reich. When the "Horst Wessel" and "Deutschland Uber Alles" were sung, which was done as a part of the ritual, the Bundist

stood at rigid attention giving the Nazi salute. The American flag was displayed also, and "America" was sung, but there was no salute to the American flag. The United States was divided up into districts or "Gaus" and "Ortsgruppes" or units. Over all was the Bundesfuehrer. It was just as the Nazis in Germany were organized.

The Bund had its Jugendschaft and Madchenschaft just [fol. 123] as the Hitler youth movement had in Germany. They wore similar uniforms and carried a similar banner. The Bund's organization, Ordnungs Dienst, referred to as the OD, corresponded to the storm troopers of the Nazis and wore uniforms similar to those of Hitler's storm troopers. The Bund maintained camps where the storm troopers drilled and where the Nazi flags were flown, Nazi paraphernalia exhibited, Nazi propaganda distributed, and Nazi speakers sponsored. One of these camps was at Grafton, Wisconsin, known as Camp Hindenburg.

The Bund published and distributed newspapers which preached the Nazi doctrine in bold and brazen bids for loyalty to Hitler. The following are samples taken from among hundreds of similar pronouncements:

> August 31, 1933: "Although it is not possible for us National Socialists and our 'Friends of the New Germany' to be present at this year's historic Party Day with a greater delegation, we feel a special need to assure all our comrades in the homeland that we here are whole-heartedly in spirit united with you in the midst of battle for our common goal."
>
> September 16, 1933: "* * * In loyalty to our Fuehrer, Adolf Hitler, we take up the battle on the American front and will not lay down the arms of defense and truth until a victory has been won in this country on the entire line in honor of our homeland."
>
> May 5, 1934: "To us in America, Hitler's birthday is an opportunity to admit that our whole heart belongs to him as the advocate of a new world philosophy which here, too has moved the minds most extensively; and we trust that fate will preserve him through many years for our German homeland. Again we pledge, on the occasion of Hitler's birthday, that we shall be spiritual fighters for a unified Germandom."
>
> March 5, 1936: "We men and women in the Bund, 'Friends of the New Germany,' acknowledge from

deepest conviction Adolf Hitler as our spiritual leader. We pledge ourselves to the community of blood of all Germans in all the world."

The Bund slogan was, "One folk, One state, One leader." The Bundesfuehrer had supreme and unlimited authority. The Bund was the means of conveying the idea to all persons of German blood in this country that they owed obedience and loyalty to the leader of the German nation, [fol. 124] Adolph Hitler, and regardless of where they were or of what obligations they had assumed toward other countries, under the concept of racial superiority, the German "Volkstum" was superior to any obligation to the United States, and persons of German blood were to remain always Germans.

The Bund looked forward to the day when National Socialism would supplant the constitutional form of government in the United States, and its political program here was actively isolationist. Its endeavor was to keep America out of war, not to help America, but to help Germany. Bund commands advocated and directed noncompliance with the Alien Registration and Selective Training and Service Acts.

There was a Bund unit in Milwaukee. There were no records kept of membership. George Froboese was the Midwestern Gauleiter and Bundesfuehrer. He was the leader of the Milwaukee unit. The Bund principles were followed by the unit in Milwaukee, and the Bund's commands which were received monthly from national headquarters, were read to the meetings. The Milwaukee unit observed the Hitler salute and closed its meetings with the "Horst Wessel" song. They sponsored motion pictures furnished by the Nazi propagandist, Dr. Goebbels. In fact, the defendant himself made arrangements while in Germany in 1934 to have the Nazi propaganda films sent to the Milwaukee unit.

The Milwaukee unit had its storm troopers, its camps, its Jugendschaft, and Madschenschaft. It was very much interested in the training of youth, and one of its subleaders was sent to Germany for a course of training in the Nazi practices. Upon his return to Milwaukee, this Bund representative tried to put into force and effect the devices for youth training which he had learned in Germany.

The Milwaukee unit sent representatives to the district and national conventions of the Bund. In the Bund pilgrimage to Germany in 1936, George Froboese, Milwaukee Bundesfuehrer, was present, and he paraded in Bundist uniform before the leading Nazis of Germany. Froboese was permitted to meet Hitler and had a picture taken shaking hands with Hitler. While in Germany, the Bund representatives placed wreaths on the grave of Horst [fol. 125] Wessel. Representatives of the Milwaukee Bund, together with other Bund leaders, made Hitler a gift of $3,000.00 together with a "Golden Book" containing the names of the persons who had contributed to the fund.

The trial court found that the German-American Bund and its predecessor organizations were un-American and subversive, and that the teachings of such organizations were contrary to the principles of the United States. Many other courts have held the same. *United States* v. *Classen*, 56 F. Supp. 71; *United States* v. *Wilmorski*, 56 F. Supp. 63; *United States* v. *Bregler*, *supra*; *United States* v. *Braecker*, *supra*; *United States* v. *Holtz*, *supra*; *United States* v. *Sauter*, *supra*; *United States* v. *Wolter*, 53 F. Supp. 417; *United States* v. *Haas*, 51 F. Supp. 910; *United States* v. *Ritzen*, 50 F. Supp. 301; *United States* v. *Schuchardt*, 49 F. Supp. 567; *United States* v. *Baumgartner*, 47 F. Supp. 622; *United States* v. *Kuhn*, 45 F. Supp. 407.

The record abundantly supports this finding. This was no beer drinking, song singing gab-fest in Dentsch by a group of nostalgic old burghers. This organization had a serious purpose, a tragically serious and sinister purpose. It was, as the defendant said, "Hitler's grip on America." It was the instrument chosen to lay the ground work for Nazi infiltration into this country, and was the Nazi way of training little fuehrers and gauleiters and fifth columnists in anticipation of the day when Adolph Hitler would conquer and rule the world. One cannot read this record without being profoundly impressed with the serious aims and purposes of the subversive, un-American Bund. How one can be an understanding, purposeful member of such an organization and still claim to be loyal to the principles of our government and to have forsworn all allegiance to the Third Reich is beyond us to understand.

This defendant was not only a member of this subversive, un-American Bund, he was an active participant and an

enthusiastic worker in forwarding the purposes of the Bund. True, there is no record of his membership in the Bund in the sense that a membership roll has been discovered. Membership rolls of the Bund were not kept. Such as did exist were ordered destroyed. Organizations that act clandestinely do not keep membership rolls and other records that may be used to illuminate their purposes. Next to George Froboese, no man was as active in the affairs of the Milwaukee unit of the Bund as was [fol. 126] this defendant. He attended its district conventions. He attended faithfully the open and secret meetings of the Bund held at Forst Keller and the Highland Cafe. He worked with Froboese in conducting the affairs of the Milwaukee unit. He went to Froboese's home and collaborated with him in drawing up planks for the Bund platform to be introduced at its national convention. Jointly with Froboese, he wrote letters to Hitler and sent copies to Hess and Himmler. One letter was written by Froboese and the defendant to Adolph Hitler on his birthday. Letters to Hitler were closed with the expression, "In blind obedience," or, "In blind obedience I follow you." One of the letters to Hitler contained the names of 700 German nationals. The defendant helped Froboese prepare articles for publication in the Bund paper *Weckruf*. The defendant was not only a subscriber and reader of this publication, he was also a reader of *Facts In Review*, a publication issued and circulated by the well known propaganda agency of the German Reich, the German Library of Information. Nothing in the way of statements or propaganda was to be sent out from the Milwaukee Bund unless approved by Froboese or the defendant.

Under the guidance of Froboese, the defendant, and other Bundists of Milwaukee, the American Protective League was formed. This was a violently anti-Semitic organization. The defendant was admittedly an intense anti-Semite. A copy of the organization papers was sent to Hitler by Froboese and the defendant acting together. Some of the joint communications were sent to Herr Bohle at Stuttgart, Germany. He was head of the Nazi Deutsches Ausland Institut, the organization responsible for effective German infiltration in foreign countries.

When German nationals were being assembled to be sent back for work in Germany, defendant, at the Bund headquarters in the Highland Cafe, interviewed the German

workers and aided in their return to Germany. This was done in cooperation with the German consuls. The Milwaukee unit of the Bund kept close touch with the German consulate both in Milwaukee and in Chicago, and the defendant was one of the most active contacts with the German consuls. The defendant, acting under the credentials of the German consul in Chicago, collected funds for the winter relief in Germany and he forwarded the collections made to the German consul. This was an undertaking [fol. 127] officially conducted by the German government and handled by the German Ministry of Propaganda under Dr. Goebbels.

Persistent efforts were made by the Bund to gain control of the Federation of German-American Societies of Wisconsin, and the defendant and other Bund leaders tried to have the swastika flag carried in the parades of the Federation and displayed in the parks where celebrations were held. When the question came to a vote before the Federation, the defendant voted in favor of displaying the swastika at the Federation's meetings. This attempt failed. The next year the defendant brought the question up again and urged that the swastika flag be displayed, but he was again voted down. Froboese and other Bundists left the hall in anger when this action was taken. Notwithstanding the fact that the Federation had voted against displaying the swastika flag, the Bundists raised it at the German Day celebration in 1936 and when it was torn down there was a violent disturbance. Again the defendant sought approval of the Federation for the display of the swastika flag, and again the Federation refused to follow the defendant. The Federation was not dominated by the Bundists.

The Bundists then set out to organize societies in opposition to the Federation, and in doing so circulated a pamphlet entitled *Merely Our Point of View*. In this pamphlet it was stated:

> "• • • With heads high and in the firm belief in the greatness of the German Reich Fuehrer we shall wear the Honor Cross conferred by Adolf Hitler."

Thereafter the German-American Citizens Alliance was formed. It was organized in January, 1937. At first its meetings were held at Bauman's Tavern, but later they were moved to Bund headquarters at the Highland Cafe.

The most frequent attendants at the meetings of this organization were the defendant, Froboese, and other Bund leaders. Often the same people who attended the meetings of the Bund were the attendants at the meetings of the Alliance. The Alliance was used to organize Germans who were not bold enough to join the Bund. In other words, it was a front for the Bund.

Fifty-five days before his naturalization, the defendant was accepted as a member of the Alliance and was immediately put upon its executive committee. [fol. 128] His first activity in the Alliance was to collect newspaper articles that attacked Germans and German-Americans. In 1937 he made monthly reports on these articles. In March of 1938, the defendant was elected Vice President of the Alliance, and conducted 42 out of 57 of its meetings. The Alliance was dominated and controlled by the defendant. Fifty-three days after his naturalization, the defendant acted as master of ceremonies at the Alliance's celebration of German Day. Shortly after his naturalization, he began the preparation of the program for this celebration which included as a speaker, one Dr. Baer, a repesentative of the Geman Reich. Two months after his naturalization, the defendant urged the Alliance to sponsor a Solistice ceremony, which was a solemn rite of the Nazis at which a wooden swastika was burned while around the burning swastika the observers joined hands in a circle to symbolize the unity of the German people everywhere, a well known tenet of Nazi philosophy which was faithfully accepted and followed by the Bund.

The defendant wrote letters attacking the Kenosha City Council for its refusal to allow the Bund the use of the city park for a meeting. When use of the Milwaukee Auditorium was denied to the Alliance, defendant led the successful court fight in obtaining its use, and his testimony in the hearing which was held in that case was to the effect that there was no connection between the Bund and the Alliance. When steps were taken by the authorities of Wisconsin to revoke the license of the Highland Cafe, the defendant was the leader in the creation of a fund to finance an appeal to the courts to test the validity of the revocation of the Cafe's license. When the court refused to reinstate the license, defendant wrote a threatening letter to the judge.

The defendant was well acquainted with the national Bundesfuehrer, Fritz Kuhn, and solicited funds for his defense. When Kuhn was convicted in New York, defendant sent a scurrilous telegram to the presiding judge and gave newspaper publicity to this telegram. Defendant attended the trial of Nazis in Chicago. He was well acquainted with Wilbur Keegan, the national legal counsel for the Bund, and the defendant conferred with him relative to his denaturalization proceedings months before they were instituted. When Froboese committed suicide, it was the de-
[fol. 129] fendant who eulogized him as friend and comrade and called him "the most persecuted man in Milwaukee."

The defendant was active in enrolling his own daughter in the Jugendschaft of the Bund. This was prior to his taking the oath of American citizenship. He took his daughter to and from the meetings held by the Milwaukee Jugendschaft. He owned a cottage at the Bund camp where he was frequently in conference with Froboese.

At every opportunity the defendant favored and advocated cooperation between the Alliance and the Bund. Dr. Tannenberg, the acting Consul General of the German Reich, presented to the Alliance the swastika flag that had been torn down at the German Day celebration. The Nazi activities of the Milwaukee unit of the Bund became so offensively Nazi that it was suggested that the reputation of the Bund might be a hindrance to the growth of the Jugendschaft, and the Jugendschaft activities and members were transferred to the sponsorship of the Alliance with the defendant's approval.

The defendant worked with Froboese to establish a united front of Germans. One hundred delegates from various German groups attended a meeting in Milwaukee in 1940, and both defendant and Froboese addressed the meeting. When a delegate at this meeting suggested that the American public would not support persons connected with the Bund, Froboese replied, "We do not have to have the support of public opinion. Give me my Germans and I will do the job." The event was repudiated by the Wisconsin Federation of German-American Societies as "another one of the discredited Bund activities." A meeting of the Alliance was scheduled for December 10, 1941, three days after Pearl Harbor, and two days after Germany had declared war on the United States, but no one came except

the defendant and the secretary, and the meeting was called off "because of bad weather."

With full knowledge of the aims and purposes of the Bund, defendant was Bundesfuehrer Froboese's right hand man in the direction of the activities of the Bund. He was fully acquainted with the Bund's connection with the German consular representatives and with the German Foreign Institute in Stuttgart, Germany. He was the ardent defender in print and on the platform of the Bund and all of its subversive activities. He was part and parcel of it. He was not just a passive member or a fellow traveler. [fol. 130] He was an active leader. If anyone criticized or took issue with the Bund, he was the first to rush to its defense. He continued even at his trial to defend the Bund. Although he denied Bund membership, his innumerable contacts with the Bund and its Bundesfuehrer, Froboese, before, at the time, and after, his naturalization, warrant the District Court's finding that defendant was a member of the Bund and fix his membership during a period from 1936 to 1941.

Notwithstanding all of his work and activities on behalf of the Bund, the Alliance, and the Nazi party of Adolf Hitler and Germany in general, the record reveals no single act of loyalty to the United States on the defendant's part. The evidence is too clear that his heart was not in America except as he could use America to further the purposes of the Nazis in Germany. The trial court in his findings pointed out more in detail than we have the various activities of the defendant in the interest of Germany. We find all of the trial court's findings clearly, substantially, and unequivocally supported by the record. How any fair minded, conscientious judge could have heard and considered the evidence in this record and reached any other conclusion than Judge Duffy reached is beyond us to understand.

This case in all its aspects has no resemblance to the case of *Baumgartner* v. *United States*, *supra*. In that case the defendant had given only lip service to his belief in the Nazi theory that all things German were superior. He was not shown to be, as this defendant clearly was, an ardent Nazi and obedient follower of Adolf Hitler, and a tireless worker in "his master's vineyard."

Counsel for the defendant at the argument admitted that the judgment of the District Court was correct, that the

record would support the judgment, if Judge Duffy was warranted in believing the testimony of one Claire Mertons, who was the secretary of George Froboese. The defendant testified that he did not know her and had never seen her until she testified at the trial. Her clear, straightforward testimony that she was attending these meetings and acting as she did act, is corroborated by the testimony of two members of the Milwaukee Police Force to whom at various times she reported her activities with Froboese and the defendant and by the testimony of a judge in Milwaukee with whom she had discussed her activities at the time. The judge testified in response to questions put to [fol. 131] him by the defendant that the reputation of Claire Mertons for truth and veracity was good.

Her testimony placed the defendant in close collaboration with Froboese in the management of the Milwaukee Bund program. She met with Froboese and the defendant at the home of Froboese where she did the secretarial work as Froboese and the defendant wrote letters to Hitler and other Nazis in Germany, prepared the program for Bund meetings, and wrote the organization papers for the American Protective League, planks for the Bund platform, and articles for publication in the Bund papers and others. She tied the defendant firmly to the subversive activities of the Bund. It was an inside view of the secretive part played by the defendant in forwarding the Nazi program in Milwaukee. Mrs. Mertons' testimony was wholly credible and corroborated in many respects.

This record fairly reeks with the slimy tactics of Nazi propaganda and delineates the pattern of Nazi infiltration. It places the defendant in active, understanding, purposeful cooperation with the Nazi scheme. It had worked in Austria and other countries of Europe. That it failed here is due to no fault of the defendant, but is due to the sacrifice of brave American boys and their stalwart allies. This record is unmatched in our experience for infidelity, disloyalty, and conscious misrepresentation.

The defendant capped the climax and indelibly stamped his conduct as fraudulent in becoming naturalized when he said, when questioned as to whether his pro-Nazi conduct was not contrary to his allegiance to his American citizenship, "That (American citizenship) is a good thing to hide

behind." That was a typical Nazi statement, deep rooted in the teachings of *Mein Kampf*.

The judgment of the District Court is

Affirmed.

[fol. 132] In United States Circuit Court of Appeals

Before Hon. Evan A. Evans, Circuit Judge, Hon. William M. Sparks, Circuit Judge, Hon. Sherman Minton, Circuit Judge

8676

The United States of America, Plaintiff-Appellee,

vs.

Paul Knauer, Defendant-Appellant

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Judgment—May 29, 1945

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Wisconsin, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

In United States Circuit Court of Appeals

[Title omitted]

Order Extending Time—June 12, 1945

On petition of appellant Paul Knauer, pro se, it is ordered that a ten day extension of time be allowed for preparing a printed petition for rehearing of this cause.

[fol. 133] And afterwards, to-wit: On the twenty-third day of June, 1945, there was filed in the office of the Clerk of this Court, a Petition for Rehearing, which said petition is not copied herein.

In United States Circuit Court of Appeals

[Title omitted]

Order Denying Petition for Rehearing. June 28, 1945

It is ordered by the Court that the petition for a rehearing of this cause be, and the same is hereby, denied.

In United States Circuit Court of Appeals

[Title omitted]

Order Staying Issuance of Mandate. July 3, 1945

On motion of appellant, pro se, it is ordered that the issuance of the mandate of this Court in this cause be, and the same is hereby, stayed pursuant to Rule 25 of the Rules of this Court.

[fol. 134] In United States Circuit Court of Appeals

[Title omitted]

Order Staying Issuance of Mandate. August 10, 1945

On petition of counsel of appellant, it is ordered that the issuance of the mandate of this Court be, and the same is hereby, stayed for an additional period of thirty (30) days pursuant to Rule 25 of the Rules of this Court.

In United States Circuit Court of Appeals

[Title omitted]

Order Staying Issuance of Mandate. August 28, 1945

On motion of counsel for defendant-appellant, it is ordered that the issuance of the mandate of this Court in this cause be, and the same is hereby, stayed for an additional thirty days, and, it is further ordered, that the Clerk of this Court certify the original records of this cause to the Clerk of the Supreme Court of the United States.

[fol. 135] IN THE UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

DESIGNATION OF PORTIONS OF RECORD—Filed September 10, 1945

To: Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please prepare Transcript of Record for use on Petition for Certiorari to the Supreme Court of the United States and include therein the following designated portions thereof:

1. Transcript of record of the District Court.
2. Order showing hearing of cause.
3. Opinion of the Court.
4. Judgment order of Affirmance.
4½. Order time to file rehearing petition extended.
5. Reference to filing rehearing.
6. Order denying petition for rehearing.
7. Orders staying Mandate, July 3, August 10 and August 28, 1945.

Ode L. Rankin, Attorney for Appellant.

[fol. 136] STATE OF ILLINOIS,
County of Cook, ss:

Ode L. Rankin being duly sworn, deposes and says that on September 10th, 1945 he served a true copy of the foregoing Designation of Portions of Record on Timothy T. Cronin, U. S. District Attorney, Federal Building, Milwaukee, Wisconsin, by placing it in a properly stamped envelope and depositing same in U. S. Mail Chute at 134 N. LaSalle Street, Chicago, Illinois, addressed to him at the above stated address.

Ode L. Rankin.

Subscribed and sworn to before me this 10th day of September, A. D. 1945. Bessie Beleniak, Notary Public. (Seal.)

[fol. 137] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 138] In the Supreme Court of the United States

Stipulation as to Printing of the Record—Filed September 12, 1945

Subject to the approval of the Court, counsel for the respective parties in the above case hereby stipulate and agree that for purposes of the petition for certiorari the printed portion of the record shall consist of transcript of the proceedings in the District Court and the Circuit Court of Appeals, exclusive of the testimony and other evidence and exhibits introduced in the District Court. It is further agreed that either side may refer in its brief and argument to the unprinted portion of the transcript and record.

Respectfully submitted, Ode L. Rankin, Counsel for Petitioner. Harold Judson, Acting Solicitor General.

[fol. 100] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1945

No. —

PAUL KNAUER, Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above entitled cause be, and the same is hereby, extended to and including October 15th, 1945.

Wiley Rutledge, Associate Justice of the Supreme Court of the United States.

Dated this 22d day of September, 1945.

[fol. 101] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI. Filed December 10, 1945.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Jackson took no part in the consideration or decision of this application.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ODE L. RANKIN,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR CERTIORARI

To the Honorable, the Justices of the Supreme Court of the United States:

Your petitioner, Paul Knauer, prays for the Writ of Certiorari to the Circuit Court of Appeals for the Seventh Circuit to bring up for review here the judgment of said Court affirming a decree of the District Court of the United States for the Eastern District of Wisconsin, by which the order of a State Court of Wisconsin admitting petitioner to citizenship was vacated and his Certificate of Citizenship cancelled.

Summary Statement of Matter Involved

Your petitioner was born at Saalfeld, Germany, March 3, 1895, came to the United States in April, 1925, filed a Declaration of Intention of becoming a citizen of the United

States on December 4, 1929, and on November 20, 1936, filed his Petition for Naturalization in the Circuit Court of Milwaukee County, Wisconsin, a Court of unlimited jurisdiction.

On April 13, 1937, your petitioner's application for citizenship was heard by said State Court and upon full hearing said Court found that petitioner was entitled to admission to citizenship, and accordingly the required oath of allegiance was administered to and taken by your petitioner; that thereupon the Court entered its judgment admitting petitioner to citizenship, and pursuant to such judgment, the Clerk of said State Court issued to petitioner a Certificate of Naturalization.

That by said judgment petitioner became and thereafter was a citizen of the United States with all the privileges of native born citizens and entitled under the Constitution to equal privileges and immunities and thereafter continued to reside in Milwaukee, Wisconsin.

The Complaint

On February 3, 1943, the District Attorney of the United States for the Eastern District of Wisconsin filed in the District Court of the United States for the said District at Milwaukee, Wisconsin, a complaint charging that petitioner had obtained said decree and Certificate of Naturalization from said Wisconsin State Court "fraudulently *and* illegally" (Tr. 1-3), which complaint was upon final hearing amended to read "fraudulently and *therefore* illegally" (Tr. 75).

The said complaint, which was not under oath, charged that your petitioner falsely represented in his petition for naturalization that he was attached to the principles of the United States Constitution at the time of filing his said petition and for five years prior thereto; that he did not

intend to renounce allegiance and fidelity to the German Reich of which he was a subject, and did not intend to reside permanently in the United States; and that, likewise, his oath of allegiance to the United States was false in that he did not in fact renounce allegiance to the German Reich, nor intend to support the Constitution of the United States nor to bear true faith and allegiance to it (Tr. 1-3).

The order of the Wisconsin State Court was not alleged to be void for want of any jurisdictional fact, nor invalid for any reason. There is no allegation in the said Petition as to what was said or what evidence was heard before the Wisconsin State Court, or the extent or scope of the evidence upon the hearing of petitioner's application for citizenship—the charges are that petitioner swore falsely to the said statements in each of said documents.

The prayer of the Complaint of the United States was that the order of the State Court admitting petitioner to citizenship be vacated and set aside and that his Certificate of Naturalization issued by the Clerk of the Wisconsin State Court be set aside and petitioner forever restrained from claiming under it (Tr. 3).

Your petitioner appeared pro se and conducted his own defense.

Answer of Petitioner

Your petitioner filed his Answer to said Complaint (Tr. 4) denying all charges therein made against him, claiming that his purposes were high; that he had been examined by governmental agencies as to his knowledge and belief in the American form of government; that he called two competent witnesses to verify his character, his qualifications for citizenship and his beliefs; all of which were found to be above reproach and in full accord with his statements and declarations made in his said Petition; that with a clear conscience, and, without any mental reservation or purpose

of evasion whatsoever, he swore to renounce and abjure all allegiance and fidelity to the German Reich of which he had theretofore been a citizen and likewise to support and defend his newly adopted homeland and to uphold, support and defend its Constitution and laws against all enemies, foreign and domestic; that he did not commit any illegal act to obtain his naturalization papers, and that he did not acquire his Certificate of Naturalization fraudulently and falsely; that he definitely intended to bear true allegiance to the United States and did not intend to remain a citizen of the German Reich. (Tr. 4-10).

Your petitioner alleged in his said Answer that the said proceeding to denaturalize him was in violation of the 14th Amendment to the Constitution, which provides that all persons of the United States, born or naturalized therein, are entitled to equal privileges and immunities; that the Nationality Act of 1940 should be held to be a criminal statute and a jury trial allowed and, unless so construed, would violate the 6th Amendment of the Constitution; and violates the 8th Amendment to the Constitution, and is an ex-post facto law violating Article 1, Section 9, Paragraph 3 of the Constitution and that it violates the due process clause of the 5th Amendment to the Constitution (Tr. 7-8).

The United States did not reply to said Answer.

Cases Consolidated for Mass Trial

About the time of filing this case, the District Attorney for said District filed a large number of similar cases and on May 12, 1943, a motion was made to consolidate this case with thirteen other similar cases with the avowed purpose of determining in one trial an issue of fact claimed to be common to all fourteen cases, and thereafter to try the remaining issues in each case separately and in

seriatim (Tr. 11). The motion, supported by affidavit of the Assistant District Attorney (Tr. 12) was resisted by your petitioner (Tr. 15), his objection overruled, and an order entered (Tr. 16) consolidating said fourteen cases for the purpose of receiving evidence.

> "concerning the organization, aims, purposes, and activities of the German-American Bund, its National and local subdivisions, its predecessors and affiliates, including the Grafton Settlement League, Inc., subject to the usual right of cross-examination and objection by each defendant,"

about which matters nothing had been said in said complaint.

It was further ordered that each defendant might introduce evidence as to such issues, and that each defendant in his subsequent trial might introduce pertinent evidence as to his individual case, and that after conclusion of the trial of the consolidated issues, the trial of each individual defendant should continue separately (Tr. 18).

A pretrial conference settled the method of introduction of various exhibits, documents, newspaper articles, translations, etc. (Tr. 18).

The evidence taken in the mass hearing in typewritten question and answer form, some 1400 typewritten pages, is in the record but was never abstracted or printed; exhibits received in evidence in great numbers, and in large bulk, are in the record but have never been described in a printed record. Also the testimony taken in the subsequent and separate trial of your petitioner is in the record, in typewritten question and answer form, some 1000 pages, never having been abstracted or printed.

The transcript of the proceedings in the trial court were not printed for the Circuit Court of Appeals, that Court having considered the record in that typewritten form, with

printed briefs of respective counsel, who were privileged by order of Court to refer in their briefs to the typewritten record; that such procedure was adopted because of the inability of petitioner to carry the financial burden.

The Mass Trial

The mass trial was commenced on September 21, 1943, consuming approximately eight court days; some thirty-odd witnesses were examined; 1433 pages of typewritten testimony taken; 100-odd exhibits were introduced, including books, editorials, news articles, speeches, pamphlets, hearsay, broadcasts, deductions and suspicions.

The Individual Trial of Petitioner

At the conclusion of the mass trial, the individual trial of your petitioner was commenced on November 22, 1943 and consumed six and one-half days, when it was adjourned on December 1, 1943, and was resumed on January 6, 1944, and another day was consumed. 1046 pages of testimony were taken and some 200-odd exhibits were introduced.

The Findings of the Mass Trial

On May 25, 1944, the trial Judge of the District Court filed certain findings pertaining to the evidence produced in the mass trial as to ten of the defendants, including your petitioner (four having been dismissed).

The findings, consisting of 26 paragraphs, 1 to 26 (Tr. 18-28), state that each petition contained identical allegations as to their several intentions not to become bona fide citizens, in that, the mental attitude of each was opposed to the statements he made in his application and in his oath.

The Court found that the issues tried en masse were common to all of the cases and that the principal common issue concerned the organization, aims, purposes and ac-

tivities of the German American Bund, its National and local subdivisions, its predecessors and affiliates, including the Grafton Settlement League, Inc. (Tr. 20).

The Court then holds:

> "The evidence clearly, unequivocably and convincingly, establishes that the German American Bund and its predecessor organizations were Un-American and subversive, and that the teachings were contrary to the principles of the Constitution of the United States" (Tr. 20).

The Court then concludes:

> "2. The fact that a person was a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant cancellation of a decree of naturalization" (Tr. 27).

Findings Made After Petitioner's Trial

On June 16, 1944, the Court filed a memorandum opinion with its findings in your petitioner's case in which the Court said that the burden was on the plaintiff "to establish its contentions affirmatively by evidence clear, convincing and unequivocal,—to all practical intents and purposes beyond a reasonable doubt" (Tr. 30).

The trial judge further stated that most of the statements of the defendants in the consolidated cases, relied upon by the Government to show mental attitude at the time their oaths were taken, "were made before our Nation was attacked" (Tr. 30).

The trial judge did not, however, separate his findings so as to show what was done and said *before naturalization*, and what was said and done *after the oath* of allegiance.

The "findings" of the trial judge are predominately conclusions, inferences, deductions, presumptions, inferences upon inferences.

The ultimate conclusions of the trial judge, based upon other conclusions, are that, after petitioner was admitted to citizenship in 1937, through 1941 (Pearl Harbor), his attitude toward fidelity and allegiance and attachment to the principles of the Constitution were the same as prior to the date of naturalization (Finding No. 59, Tr. 41); and that, from the conduct of petitioner through the years *before and after* his naturalization as well as the evidence *in its entirety* the Court concludes that when petitioner filed his application for citizenship, at the time of his naturalization, and at all times thereafter, your petitioner did not in good faith intend to renounce allegiance and fidelity to the German Reich, and did not in fact do so (Finding 60, Tr. 42), and the Court finds, as it says, from petitioner's beliefs in and to National Socialism and activities in promoting it, opposition to political and racial equality, that during said time petitioner was not in fact attached to the principles of the Constitution and did not intend to support it (Tr. 48, Finding 61). The findings are based largely upon acts and expressions of petitioner after the date of his naturalization.

The Conclusions of Law

The conclusions of law predicated upon the Court's findings were that the order of the Circuit Court of Milwaukee County, Wisconsin, admitting defendant to citizenship and its Certificate of Naturalization "were fraudulently and therefore illegally procured and should be revoked, set aside and cancelled" (Tr. 43).

Court's Comments on Baumgartner Case

The trial Judge then comments that his findings and conclusions were made after he had an opportunity to examine the decision of this Court in *Baumgartner v. U. S.*,

322 U. S. 665, decided June 12, 1944, four days prior to the filing of his opinion and findings in your petitioner's case. He then distinguishes the two cases by the statement, "Here there was evidence showing the attitude of the defendant prior to the date that he took his oath on April 13, 1937, which made him a citizen" (Tr. 43), and that he was convinced beyond reasonable doubt that petitioner practiced fraud "when he obtained his Certificate of Naturalization." However, the trial judge does not say that he was convinced beyond doubt, by the evidence of what happened prior to petitioner's oath, but relied upon the evidence in its entirety, and that he was convinced beyond doubt by all the evidence (Tr. 42).

The Decree of Cancellation

A decree was entered July 7, 1944 by which it was adjudged that the order of the Circuit Court of Milwaukee County, Wisconsin, made April 13, 1937 admitting petitioner to citizenship be revoked, set aside and cancelled, the Certificate of Naturalization issued thereon be delivered up for cancellation, and cancelled, and that petitioner desist and refrain from exercising any rights, privileges or benefits under said order and certificate (Tr. 44).

The Trial Court Did Not Follow the Schneiderman and Baumgartner Cases

In discussing, at the pre-trial conference, the procedure to be followed at the trial, and again at the opening of the mass trial, the trial judge remarked:

> "I should repeat here what I said at the pretrial conference, that it will be my *endeavor* in this case to apply the rules as laid down by the Supreme Court *and as interpreted by our Circuit Court of Appeals of the Seventh Circuit.* It may well be that their (Circuit Court of Appeals) interpretation *does not entirely*

coincide with some other Circuit Courts of Appeals, but I feel bound to follow as nearly as I can their opinion in this matter, their ideas, their interpretation" (Mass trial record, p. 18).

Your petitioner says that the holding of the Circuit Court of Appeals of the Seventh Circuit in the *Krause* case, 136 F. 2d 935, to which the trial judge referred and which he said he must follow, is out of harmony with the interpretations of other Circuit Courts of Appeal, and the decisions of this Court.

The Appeal

Appeal from said decree was perfected, bond given, and the judgment was stayed pending appeal (Tr. 65).

The Circuit Court of Appeals has also stayed its mandate pending this appeal (Tr. 97).

The Opinion of the Circuit Court of Appeals

The opinion of the Circuit Court of Appeals rendered in this cause is reported as *United States* v. *Knauer*, 149 F. 2d 519 (Advance Sheet, No. 5, August 6, 1945).

The Circuit Court of Appeals affirmed the decree of the District Court. It did not attempt to harmonize its own opinion with either *Schneiderman* v. *U. S.*, 320, U. S. 118, or *Baumgartner* v. *U. S.*, 322 U. S. 665. Of the *Baumgartner* case it remarks that there is no resemblance to this case—and the *Schneiderman* case is given the silent treatment —not being mentioned.

However, it is to be noted that the Seventh Circuit Court said in another and earlier case, *U. S.* v. *Krause*, 136 F. 2d 935, above mentioned, that this Court did not, by its holdings in the *Schneiderman* case, intend to overrule the long line of cases in which subsequent conduct and expressions has been relied upon as a basis for can-

cellation. The *Krause* case was one of the cases relied upon by the District Court in deciding this case. Other cases of the same type are cited in the opinion of the trial judge (Tr. 29).

Your petitioner shows that other Circuit Courts of Appeal have followed the rule of evidence promulgated in the *Schneiderman* case and approved in the *Baumgartner* case and that the decisions of the Seventh Circuit Court of Appeals in this case and the *Krause* case are out of harmony with the rulings of other Circuit Courts of Appeal and those of this Court.

Questions Presented

I

Where the complaint to vacate a naturalization judgment and cancel the naturalization certificate does not question the existence of any jurisdictional objective fact necessary to a hearing by the Naturalization Court upon the subjective issues of intent, attitude, etc., does it become res adjudicata of such subjective matters?

II

Does the charge in the complaint present a case of intrinsic fraud only, and if so, is it remediable in equity at all, and has the District Court jurisdiction to question the decree of Naturalization of a State Court for intrinsic fraud?

III

Does a District Court of the United States have jurisdiction to vacate a Naturalization Decree of a State Court for mere errors of judgment in the decision of issues submitted to it by Congress for decision, and does the power of the District Court extend only to vacate a State Court

judgment upon jurisdictional grounds, i. e. for fraud affecting jurisdiction; and for lack of some jurisdictional fact rendering the naturalization illegal?

IV

Where the fraud charged is intrinsic in the issues triable by the State Court on oral evidence, and the issues are tried and become merged in the judgment of Naturalization, is such judgment res adjudicata of the matters within such issues and not vulnerable to a complaint in equity in the District Court for error in evaluating the testimony and for false testimony?

V

Does the complaint state a cause of action in equity to vacate a Naturalization judgment of a State Court?

VI

Where a Naturalization judgment is voidable only are the acts and expressions of a naturalized person made after naturalization, of sufficient probative value to vacate a naturalization judgment, where his acts and expressions are only such acts and expressions as are permissible to a native born citizen?

VII

Are the acts and expressions of a naturalized citizen made subsequent to the naturalization judgment, and which are permissible to a native born citizen, competent proof in an action to vacate a naturalization judgment, if that judgment is voidable only and not void?

VIII

Does a naturalized citizen have the rights and privileges of act and expression of a native born citizen during the

period the judgment of naturalization remains unreversed upon the record?

IX

When a judgment of naturalization is vacated, is it vacated as of the date of entry so as to render void any business transactions theretofore had where citizenship is a necessary basis to such transaction, and is a certificate of naturalization cancelled as of the date of its issue or as of the date of the decree cancelling it?

Reasons Asserted for Allowance of the Writ

I

In deciding this case neither the trial court nor the Circuit Court of Appeals followed the decisions of this Court in *Schneiderman* v. *U. S.*, 320 U. S. 118, nor *Baumgartner* v. *U. S.*, 322 U. S. 635.

II

The evidence as to the acts and expressions, both before and after the naturalization judgment, was lumped together by both trial court and Circuit Court of Appeals and treated as of equal probative effect so that occurrences following the naturalization judgment were not appraised as required by the rulings of this Court in said *Schneiderman* and *Baumgartner* cases.

III

The evidence herein, when properly appraised by this Court, which is not bound by the findings of the lower courts, will show that petitioner was admitted to citizenship without fraud or illegality in the naturalization proceedings and that he acted within his legal rights and in good faith.

IV

The finding of the trial court No. 50 (Tr. 38) that petitioner was a member of the Milwaukee Unit of the Bund is not supported by any direct evidence upon the question and petitioner, when called as a witness for the Government, positively denied that he ever was. The Circuit Court of Appeals in reaching its conclusions relied upon Finding 50 as ground for its opinion.

V

The District Judge intermingled in his findings occurrences and expressions without fixing any dates therefor and without differentiation as to before or after naturalization and based his conclusions on "the evidence in its entirety," (Finding 60, Tr. 42), or as is said "upon all the evidence the Court finds" (Finding 59, Tr. 41), all contrary to the rules promulgated by this Court for denaturalization cases, and the Circuit Court of Appeals approved the decree and itself co-mingled the facts all of which violated the confirmed rule of decision.

VI

In citizenship cases the whole record is open for review and where, on the face of the record, it appears that neither the trial court nor the Circuit Court of Appeals applied the important rulings of this Court as to evidence in this denaturalization case, and where it appears petitioner was prejudiced by such rulings, this Court should right the wrong by reviewing the case on certiorari.

VII

Not one of many favorable elements or proof is credited to petitioner in the findings and on review petitioner can present the evidence in the record so as to show that he did nothing after admission but that which any native born citizen was privileged to do, and that all his actions, mental attitudes, and conduct before naturalization was known to the Government and its examiners at the time of his admission and that he had done nothing to bar his admission to citizenship.

VIII

The Circuit Court of Appeals in its opinions and decisions is out of harmony with other Circuit Courts of Appeal in these denaturalization cases and is not following the rules of decision made by this Court to govern denaturalization cases. See *U. S.* v. *Krause*, 136 F. 2d 935, also opinion in the case at bar (Tr. 83 to 96) 149 F. 2d 519.

Jurisdiction

The jurisdiction of the court is invoked under Section 237 B of the Judicial Code as amended. 43 Stat. 927, 28 U. S. C. A. Sec. 344 (b).

The date of the final order of the Circuit Court of Appeals denying rehearing was June 28, 1945, and this Court by order of Mr. Justice Rutledge entered September 22, 1945, extended the time of filing this Petition for Certiorari to October 15, 1945.

Prayer

Wherefore, your Petitioner prays that this Court allow this Petition for Certiorari and grant the Writ of Certiorari directed to the Circuit Court of Appeals for the Seventh Circuit to bring up the record in this cause here to

review the judgments of the District Court of the United States for the Eastern District of Wisconsin and the judgment affirming the same entered by the said Circuit Court of Appeals for the Seventh Circuit.

PAUL KNAUER,
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ODE L. RANKIN,
His Attorney,
134 N. LaSalle Street,
Chicago 2, Illinois,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

BRIEF

I

The Opinion Below

The opinion of the Circuit Court of Appeals is reported as *United States* v. *Knauer*, 149 F. 2d 519 (Advance Sheet No. 5, August 6, 1945).

Jurisdiction

The jurisdiction of this Court is invoked under Section 237 B of the Judicial Code as amended, 43 Stat. 927, 28 U. S. C. A. Sec. 344 (b).

Petition for rehearing was denied on June 28, 1945.

The order of the Circuit Court of Appeals became final on June 28, 1945, when petition for rehearing was denied (Tr. 97), and Mr. Justice Rutledge entered an order on September 22, 1945, extending time for filing this Petition to October 15, 1945.

Errors Relied Upon

The trial court erred in assuming jurisdiction upon the general allegations contained in the complaint to set aside the judgment of a State Court for alleged intrinsic fraud.

The trial court erred in drawing conclusions of law based upon acts and expressions of petitioner after he was admitted to citizenship; and erred in drawing conclusions of law from acts and expressions of petitioner before and after naturalization, and decreeing upon such conclusions.

The trial court erred in decreeing vacation of the naturalization judgment of the State Court and the cancellation of petitioner's certificate of naturalization.

The Circuit Court of Appeals erred in disregarding the rule of evidence promulgated by this Court for trial of denaturalization cases in *Schneiderman* v. *U. S.*, 320 U. S. 118, and *Baumgartner* v. *U. S.*, 322 U. S. 635.

The Circuit Court of Appeals erred in affirming the decree of the District Court.

ARGUMENT

Foreword

This case originated in peacetime and was tried in a war atmosphere.

The complaint states no equitable ground for relief and states no cause of action.

The complaint alleges that petition's Certificate of Naturalization was procured "fraudulently" and *therefore* "illegally", by falsely representing in his petition as to matters of intention, then present and future, mental attitudes of attachment and disposition, and making a false oath of allegiance—all subjective matters put in issue and judicially determined in open hearing in the State Court under spe-

cific delegation of authority by the Congress, and it is contended they are now *res adjudicata* between the parties.

It is contended that by the form of the charge every jurisdictional element of a naturalization proceeding entitling petitioner to a hearing on the subjective issues is admitted to exist; that the fraud charged is fraud in the issues tendered; that the fraud charged is intrinsic and does not form an equitable base for collaterally voiding a judgment; that "fraud" and "illegal procurement" are distinct and different bases for equitable relief; that neither ground is present, and that hence there is no subject matter for adjudication.

In the trial of this case the Court bulked together the evidence before and after the naturalization judgment, without differentiation, following the lead of the Circuit Court of Appeals, which had lately stated in *U. S. v. Krause*, 136 F. 2d 935 that in its viewpoint this Court did not intend to *overrule* the long line of cases where naturalized persons had been theretofore denaturalized upon that theory of proof. The trial court followed the *Krause* case and did not apply the doctrine of the *Schneiderman* and *Baumgartner* cases, nor follow them, nor did the Circuit Court of Appeals. It is contended that the Circuit Court of Appeals is out of harmony with this Court and in disagreement with other Circuits.

It is contended that the legal effect of the decree of the District Court is that defendant is expelled, not denaturalized.

I

Section 738 of the Nationality Code provides a new duty for district attorneys, but does not create a new jurisdiction in courts of equity. The District Attorney has here asked for relief from intrinsic fraud, the remedy for which, lies in the field of error, and over which equity does not extend its remedies.

Section 738 of the Nationality Code, first enacted in 1906 and re-enacted in 1940, provides that it shall be the duty of United States District Attorneys, upon affidavit showing good cause, to institute proceedings in naturalization courts,

> "for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

As first enacted in 1906, it provided only for cancellation of the Certificate of Naturalization. As re-enacted in 1940 it was broadened to include revoking and setting aside the judgment of naturalization.

A thoughtful observation of Section 738 leads to the conclusion that it creates, or particularizes, a *duty* for the District Attorney and does not create a new jurisdiction in the Courts. The jurisdiction to be invoked is as old as the hills and inherent in the Court,— the power to make its judgments speak truth, to purge its records of fraud, and grant relief to persons injured thereby. The Courts have always had that power; but District Attorneys, it would seem, would otherwise have no such duty, that duty resting upon the Attorney General of the United States (*U. S.* v. *Throckmorton*, 98 U. S. 61, 70). Always the

United States could apply through its Attorney General for a new trial, for a rehearing on newly discovered evidence, or could have moved to expunge the judgment for want of jurisdiction; and like any other litigant, it might ask a court of equity for relief against an extrinsic fraud practiced upon it to procure a naturalization; and the road to appeal has always been open to the United States, as one of the parties to the judgment of naturalization.

True, this Court has said that the right of appeal from, and the right to file a bill to vacate a naturalization judgment, are cumulative remedies (*United States* v. *Ness*, 245 U. S. 319); but, it is respectfully suggested, those rights, by their very nature, always existed, independent of Section 738, and this Court has so recognized them; but this Court did not say that the remedy in equity for relief from fraud or illegality could also be used as a writ of error to reverse a merely erroneous judgment, not by inspection of the record, but by a retrial of the issues. Each remedy has its distinctive field, and serves its own distinctive purpose.

U. S. v. *Ness*, 245 U. S. 319 was decided upon the assumption that there was no right of appeal from a naturalization judgment (P. 326). Later this court decided in *Tutun* v. *U. S.*, 270 U. S. 568, that a naturalization judgment "like other judgments of a court of record is accepted as complete evidence of its own validity unless set aside" (P. 577), and so has the stability furnished by the doctrine of *res adjudicata*.

An error remediable by appeal or writ of error is one that can be seen on inspection of the record,—whether that error renders the judgment void or voidable. Equity will relieve from the exercise of rights under a void judgment or a judgment voidable for extrinsic fraud.

A judgment illegally procured is void because of the absence of some jurisdictional fact either patent on the

face of the record, or latent in some jurisdictional fact, obviously existing, but which evidence will disclose did not in fact exist when the judgment was entered. If patent, the judgment is void and the error may be reached by appeal, writ of error, motion to expunge, or by complaint in equity to cancel a void certificate of naturalization, on the equitable ground of cancellation. And likewise latent extrinsic fraud is remediable in equity.

That the judgment of naturalization is a binding adjudication between the United States and the naturalized person, with all the attributes of finality, is indicated by Congress' direction to District Attorneys to apply to one of the Courts having jurisdiction to naturalize, to vacate the judgment and cancel the Certificate it authorizes, on the ground of fraud or that the judgment order and Certificate of Naturalization were illegally procured (8 U. S. C. A., Sec. 738).

Here all jurisdictional facts are admitted by the complaint to exist, and the only fraud charged is false testimony at the trial and a false oath of allegiance,—false testimony as to subjective matters respecting intent and mental attitudes,—intrinsic fraud.

When no bill of exceptions is taken to preserve the testimony of witnesses in a trial, their testimony becomes merged in the judgment. Everything necessary to the validity of the judgment is supposed to have been detailed in the evidence.

No one can tell from this record, but that all of the things said against petitioner as happening prior to his naturalization, were made known to the Judge hearing the naturalization proceeding, or was in the preliminary governmental examinations prepared for use on trial. There is no evidence in this record to indicate that any fact was withheld from

the government or the Judge at the naturalization trial. All of the things said, and that could have been said, are presumed to have been said; proving them a second time, for some other Judge to pass upon, is not the theory upon which such naturalization proceedings rest.

Such a dramatic event as shifting one's nationality, with all its implications, calls for an irrevocable judgment, protection against the renounced sovereign.

It is to be presumed that the Judge of the State Court heard and weighed each fact presented in this record as having occurred prior to April 13, 1937; and it is to be presumed that the Judge there held that there was nothing in those facts, everything considered, inconsistent with the allegations of the application for citizenship, and that every required intention was present, and that every necessary mental attitude existed. All such, once adjudicated, is unchangeably decided.

Intrinsic Fraud Is Not Remediable in Equity

False testimony is known as intrinsic fraud and cannot be remedied by a complaint in equity. The remedy for intrinsic fraud is in the suit in which the false testimony was given. In *U. S. v. Throckmorton*, 98 U. S. 61, 65, this Court said concerning an effort to reach intrinsic fraud by a complaint in equity:

> "The trial is the opportunity for making the truth appear. If unfortunately he fails, being overcome by perjured testimony and if likewise he fails to show the injustice that has been done him on motion for new trial, and the judgment is affirmed on appeal, he is without remedy * * * and so the rule is that a final judgment cannot be annulled merely because it can be shown to have been based on perjured testimony; for if this could be done once, it could be done again and again, ad infinitum."

If it could be so done, petitioner might file a complaint to set aside the decree in this case because of the allegedly false testimony of the witness Merton, which petitioner strenuously insisted and still insists was perjured (Proceedings in *Knauer* case, pages 948-976).

The Federal Courts of Appeal have applied the ruling in the *Throckmorton* case to denaturalization cases. See *U. S.* v. *Norsch*, 42 F. 417 (1890); *U. S.* v. *Gleeson*, 90 F. 778 (1898).

The law has set time limits upon review by writs of error and appeal binding upon the United States the same as any other litigant, at the running of which, all errors for which judgments are voidable only, are cured. The law has set no time limit upon the United States to file a complaint to set aside a judgment void for extrinsic fraud or illegality.

It is to be noted that Section 738 was enacted after this Court had held in the *Throckmorton* case that intrinsic fraud was irremediable in equity; and after the *Norsch* and *Gleeson* cases had applied the doctrine of the *Throckmorton* case to denaturalization judgments. And the provisions of Section 738 were re-enacted in 1940 after this Court had held in the *Ness* case that a Naturalization proceeding was a case and that its errors might be corrected on appeal. From which the presumption appertains that Congress adopted the laws with those constructions.

And so it appears obvious that Section 738 did not change equitable procedure nor the basis upon which must rest all complaints in equity to vacate or overthrow judgments for fraud.

Fraud To Be Relievable Must Be Extrinsic

Fraud to void a naturalization judgment must be extrinsic and with reference to some demonstrable, objective

and jurisdictional fact, or matter connected with the management of the law suit.

The basis of this suit is intrinsic fraud. The complaint originally charged that the naturalization certificate was procured "fraudulently *and* illegally" and on trial was amended to read "fraudulently *and therefore* illegally", the charge being that the representations made in his petition and in his oath of allegiance were false.

Misstatements made in the trial of the issues pertaining to subjective matters are in the field of error, and are merged in judgment; the judgment is the act of the Court, not the parties, and is not subject either to collateral overthrow or direct attack upon an allegation in a complaint in equity that the testimony heard was false, or that the case was erroneously decided.

In the case of *United States* v. *Throckmorton*, 98 U. S. 61, this Court passed upon a Complaint filed by the United States to relieve from alleged fraud in the procurement of a decree where the complaint charged that a land grant had been fraudulently antedated and that the defendant has supported the antedated grant with depositions of perjured witnesses.

This Court, after discussing the basis of the relief there asked, and the adjudications pertaining to such question, said, (P. 68):

> "* * * the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a court of competent jurisdiction, have relation to frauds, extrinsic or collateral to the matter tried by the first court, and not to fraud in the matter on which the decree is rendered."

Fraud is said to be intrinsic where the fraudulent matters were in issue and could have been or were adjudicated. (*Hilton* v. *Guyot*, 159 U. S. 113); and where the Court had

before it the same issue of fraud and the same essential facts (*Toledo S. C. v. Comp. Scale Co.*, 261 U. S. 399).

The textbook says that relief from intrinsic fraud is denied because the issue was tried; and that relief from extrinsic fraud is allowed because there never was a trial (31 Am. Jr. 232).

The charge that the certificate was procured "fraudulently and therefore illegally" only means, legally speaking, that the charge is one of fraud. Fraud has to do with some type of deception or imposition upon the court or counsel, which all recognize and few can define. It is collateral to the issues—never in them, or of them—but is distinct from, and a legally different thing than illegal procurement, and is so considered by Congress.

Nature of Illegal Procurement

Illegal procurement, as distinguished from fraud, and as obviously visioned by Congress, is obtaining the naturalization judgment and certificate upon a record wherein some one of the objective jurisdictional requirements necessary to enable the Court to proceed to trial of the subjective issues is wanting; as, for example, where there was no certificate of entry attached to the petition (*U. S. v. Ness*, 245 U. S. 319); where the witnesses were not competent; where the required residence was not present (*Johansson v. U. S.*, 225 U. S. 227), or where some jurisdictional procedural requirement was not observed, as where the hearing was not held in open Court (*U. S. v. Ginsberg*, 243 U. S. 472).

Inasmuch as the charge here made has no reference to a judgment void for want of jurisdiction to hear the application, or for other jurisdictional defect, there was no illegal procurement, as all else pertains to trial and decision upon evidence pertaining to subjective matters—errors in deciding which lie in the field of error. The amendment of the

Complaint did not change the substance of the charge, which, being one of intrinsic fraud, in its nature admits the legality of the proceeding. A charge of intrinsic fraud does not challenge jurisdiction; it raises a question of error only. It raises no issue for adjudication. It is a feigned issue.

The District Attorney therefore misconceived the remedy for the alleged wrong and the District Court erroneously proceeded to trial upon the complaint.

The issues having been once adjudicated, this suit was therefore tried without subject matter.

II

Where the necessary jurisdictional facts are in a naturalization record, a decision of the Naturalization Court upon subjective issues is res adjudicata, and the remedy for erroneous appraisal of the facts, or false swearing, is by application to the Naturalization Court for a reconsideration of the issues, and appeal therefrom to correct errors. Equity is not the forum for such relief.

A

The United States is in charge of all naturalization proceedings and in legal effect a party litigant; made so by actual participation under authority of the statute and rules made pursuant to the statute.

It cannot be seriously contended that the United States is not a party litigant to a naturalization proceeding, for the Congress authorized its appearance (Sec. 734) and made it an active participant in such proceedings; the naturalization service supplies forms, makes investigations, takes depositions, makes reports and files them in the cause. The Service checks every applicant.

The United States may have a review of the proceeding in the Circuit Court of Appeals, or in the State Court of

Appeals, as may be, if it desires to question the judgment of the naturalization court.

THE GOVERNMENT GUIDES THE ALIEN TO CITIZENSHIP

From the day the applicant leaves the old country down to the moment of the final judgment of the naturalization, the United States Service watches over him. It is present at all of the preliminaries; it prepares the evidence, fills out the forms, examines the witnesses, searches the mind, the conscience of the applicant; educates him, attends the trial, hears the evidence, examines witnesses, objects, excepts. It either states there is no objection, or makes specific objection to the applicant. The Government is in fact the applicant's next friend, watching, counseling, advising, educating—but if not satisfied, objecting, excepting, appealing.

In *U. S. v. Kusche*, 56 F. Supp. 201, 230-233, the learned District Judge, Pierson M. Hall, in passing upon a group of Bund denaturalization cases, after detailing the many administrative activities of the Department in connection with the naturalization of an alien, said this (P. 233):

> "From the time the alien institutes in the country of his origin, with the American Consul, his application for a visa quota number, until the final oath, he is not opposing any Government officer or agency, or proceeding without them. But the Government literally takes the alien by the hand and leads him through this maze of forms, questions, examinations and re-examinations, and oath and swearings, including his education in the principles of the Constitution. The Government in effect is the alien's guide and mentor, and for all practical purposes has control of the proceedings. The alien can abandon his desire to proceed, but he cannot do anything about it. At no time can the applicant move forward towards his naturalization without going to the Naturalization Service of the Government or using the forms they supply to him.

and in fact cannot go forward without the aid and assistance of the Government."

Judge Hall could have added other suggestive regulations. In 8 CFR 70.14 it is provided that where objections "by the Service to the granting of a petition for naturalization is overruled by the court, exception should be noted of record" and a "comprehensive report made immediately in order to permit prompt determination of the question of review of the court's action through Appellate, cancellation or other proceedings." And in Section 70.22 (8 CFR) it is provided that in final hearings in open court where there has been preliminary examinations, "the examination shall be conducted by the naturalization examiner or officer in such manner that the rights of the United States will be conserved under Section 11 of the Act of June 29, 1906, (34 Stat. 599). * * *. If material objection be overruled by the Court, an exception will be noted for possible action on review and leave obtained from the court to submit the objection in appropriate form for the record."

70.11 (8 CFR) provides that Naturalization officers are authorized to appear in naturalization cases and participate in examinations on behalf of the United States, call witnesses, produce evidence and be heard in opposition to applications, and have a stenographic report made of the proceedings. And 70.12 (8 CFR) provides that if it is impossible for the Service to be represented in person in Court that that fact shall be transmitted to the Judge of the Court signed by the District Director or Divisional Director and mailed in ample time in advance of the hearing; that the petitions due to be heard are to be listed on the appropriate form with number and name, and with all statements of fact below the number and name of the case; and also "show all facts that have been developed

that may be unfavorable in nature, and, if any, the grounds for objection, with pertinent comment and citation of authorities in support of the objections. In favorable cases it will be stated that no objection appears."

By 70.19 (8 CFR) the officer conducting the preliminary hearings is required to keep a docket record on the named form of his findings, favorable and unfavorable, with reasons for unfavorable findings which is to be made available to the Judge when desired.

So completely under the control of the Department is the naturalization proceeding considered to be, that examiners and officers are warned that they "have no right or authority to administer the oath of allegiance to the petitioner who must appear in person in open court at the final hearing before the Judge of the Court for that purpose" (8 CFR 70.19).

In view of these regulations it is seen that the United States considers itself an active party litigant in each case; and it is seen that it actually appears in the conduct of the trial, or that it files a report therein either consenting to the applicant's admission, or objection thereto with reasons and a brief. The rules so authorize and direct, and we may assume the persons in charge perform their duties without proof that they do so.

The United States being in fact a party litigant in each case either consenting to the applicant's admission or objecting, it stands before the Court the same as any litigant and is bound by the same rules of law and evidence.

Here the doctrine of res adjudicata applies to the evidence introduced as to all subjective matters in issue pertaining to the period prior to April 13, 1937 and the judgment is final, there having been no appeal to test out the correctness of the adjudications, and existence of the objective facts being admitted.

BOTH LITIGANTS ARE BOUND BY THE ADJUDICATION

If any one of the objective qualifications, such as declaration of intention, years of residence, competent witnesses, port of entry, hearing in open court, etc., etc., is missing, an applicant has not become a citizen, the judgment being void and subject to collateral attack. No one is bound to respect such judgment. It is void for want of subject matter.

The subjective elements—intention, attachment to Constitutional principles, mental attitudes and behavior, are specifically submitted by Congress to the Courts for adjudication. Proof of these matters requires evidence by witnesses, to the satisfaction of the Court. When such judicial investigation has been concluded, and the applicant ordered admitted, the proofs are merged in the judgment and the judgment becomes the objective fact that binds up all of the subjective matters together so that the citizenship is de jure and the finding of the existence of the subjective requirements congeals them into an objective fact along with the declaration of intention, the residence requirement, etc., etc.

When the objective jurisdictional facts admittedly exist, and the subjective issues are tried and the findings merged in the judgment with the jurisdictional facts, both parties are bound by the judgment. The applicant will not be heard to say he did not intend to renounce his allegiance to his native country nor that he took his oath with reservations. He is estopped, and being estopped, the United States is likewise bound. Both are bound or neither.

B

WHERE THERE IS JURISDICTION TO HEAR, THERE IS POWER TO DECIDE AND SUCH DECISION IS RES ADJUDICATA

The Constitution gives no power to Congress, and never has, to repudiate a naturalized citizen because of subsequent conduct, to deport him beyond the realm, expel him, or

destroy his citizenship by any type of action. He stands, when judicially admitted, upon the same ground as the native born.

Nor has Congress ever drawn a line between the native born and the "naturalized" citizen so as to put them on a different footing.

And this Court repudiated that doctrine in the *Schneiderman* and *Baumgartner* cases where conduct after naturalization had been erroneously given the same relevancy as that of the alien on probation.

To "establish uniform rules of naturalization", pertains to the admission of persons to citizenship, not to denaturalization after admission. The later power Congress does not have. But Courts do have power to set aside any of its own judgments when the jurisdictional elements are not present. That power is inherent in all courts and is a necessary power which it exercises to keep its judgments pure and truthful. That power is *recognized* by Congress,—not *granted* by Congress.

It, obviously, never was the theory of Congress to create a system of admitting aliens to citizenship, by judicial order and yet empower District Attorneys to undo at their discretion the very adjudications of the Courts so authorized; they are empowered to bring to the official attention of the Courts void proceedings by which void certificates have been issued to unqualified applicants.

Where There Is Jurisdiction to Hear the Application the Judgment Is Final

Once a person with the jurisdictional qualifications is admitted to citizenship, he is as a drop of water in the ocean, and loses individuality. He wears no stigmatizing letter, no identifying apparel, no leading strings, nor strait-jacket, as Mr. Justice Murphy terms it.

The Congress did not make it the duty of District Attorneys to appear in the citizenship proceedings and try the stereotyped issues framed by Congressional forms but Congress delegated to the Courts, and to them judicially, the matter of inquiry into, and adjudication of, the issues made by the application and to decide those issues by examination of the applicant and his necessary witnesses. All such proofs merge in the order establishing citizenship in the applicant and the facts become a thing decided, adjudicated, and res adjudicata between the United States and the applicant.

To overcome such adjudication, the requisite evidence must be something that concerns jurisdiction to hear and determine the application, something missing or wrong that would overturn the judgment; something that goes to jurisdiction to hear and determine; and of such nature as to prove the judgment to be without foundation.

Error in appraising the evidence on the subjective issues goes the way of all error, through courts of appeal.

The Government did not here plead that it had newly discovered evidence that would prove the falsity of the oaths of the applicant. The allegation goes only to attack the mental attitude and intentions, or lack of intentions, of petitioner at the time he applied for and at the time he was admitted to citizenship, which was the very issue delegated by Congress to the Naturalization Court.

Every objective jurisdictional fact necessary to citizenship is admitted by the Government. The complaint attacks only those subjective requirements which the Congress delegated to the Courts—the power of establishing citizenship by judicial findings. And the Government here admits that those judicial findings were made.

There is no substantial, first hand, affirmative, direct, evidence in the record tending to prove in any degree that petitioner, when he swore to his application, or when he

was examined by the Court, or when he took his oath of allegiance, had any mental reservations whatever, or had no intention to observe his oath, or that he had falsified his several oaths. Whatever evidence the Government produced raises only reflection, or deduction, an inference, or presumption, or suspicion.

The Government did not show that applicant swore falsely. It only offered evidence to show that defendant did what native-born citizens might legally do.

Obviously a naturalized citizen cannot be denaturalized, deported, expelled, for the exercise of privileges permissible to the native-born. Equal protection forbids.

Where the objective type of jurisdictional facts are present and, after hearing evidence on the subjective issues, an applicant is admitted to citizenship in all due legal form by judicial action, he is then a bona-fide citizen. That is this case.

The judgment is not void in any sense. Nor is it voidable except by appeal. Being then a citizen, albeit judicially born, he is then entitled to equal protection of the laws and may not be denaturalized for any cause or reason not going to the jurisdiction of the Court to hear the petition. Subsequent conduct of any type would not render the judgment void.

Being made a citizen by a judicial decree, standing unreversed of record, and performed by the applicant by acceptance and assumption of the status, duties and obligations of citizenship, the decree has been performed and the whole matter is in the past perfect tense. All acts thereafter done, all opinions thereafter expressed, are those of a citizen under protection of the Constitution but subject to the law.

The newly-made citizen is bound by his oath of allegiance. Being bound by the new tie the United States likewise is bound. Both are bound or neither.

That such adjudications are res adjudicata between the parties, this Court has in effect held or has clearly so recognized.

It is thought that the point was decided in *Ness v. U. S.*, 245 U. S. 319, which was a petition in the District Court for the Northern District of Iowa to cancel a certificate of naturalization of a State Court for failure of Ness to file with his petition a certificate of the Department, "stating the date, place and manner" of arrival as provided in the Act. The United States had entered its appearance in the naturalization proceeding and moved to dismiss on the ground that such certificate was not filed. The motion was considered and denied. Petitioner and his witnesses were heard and the naturalization granted.

At that time, 1917, it was considered that appeal did not lie from the order of naturalization (p. 326).

Within six months the Government filed complaint to cancel the certificate of naturalization of the State Court.

Ness showed that when he arrived from Norway he was ignorant of the law, and unobserved, strayed away and entered the United States without being physically examined, paying the head tax and having his entry registered. After being admitted to citizenship he offered to pay the tax and take the physical but was refused. All other qualifications he had.

It was claimed by Ness that the missing certificate was a matter of form but it was held that it was one of substance which the Court had no power to waive, hence jurisdictional.

It was claimed by Ness that in any event the judgment was res adjudicata because the Government had appeared and contested. The Court said:

> "Opposition to the granting of a petition for naturalization may prevail because of objections to the competency or weight of evidence, or credibility of wit-

nesses or mere irregularities in procedure. A decision on such minor questions, at least of a State Court of Naturalization, is, though clearly erroneous, conclusive even as against the United States if it entered an appearance under Section 11. For Congress did not see fit to provide for a direct review by appeal or writ of error" (pp. 325-26).

This Court reversed the decree and held that the naturalization certificate was "illegally procured."

Since that decision, this Court considered *Tutun* v. *U. S.*, 270 U. S. 568, and held that an appeal may be taken from naturalization judgments and the objections to res adjudicata of such judgments disappear, if any ever were tenable.

But the *Ness* case does support the contention here that the decision of a Naturalization Court is res adjudicata on all subjective issues tried by *pro and con* testimony so as to reduce the unknown quantity to a fact—which fact, so ascertained, is then a jurisdictional capstone to the naturalization structure. And that capstone is one submitted by Congress to the Naturalization Court for final judgment.

The same question was before this Court in *Schneiderman* v. *U. S.*, 320 U. S. 118, where it was contended that Schneiderman had falsely concealed his membership in the League and the party (Communist) from the naturalization court and that his oath of allegiance was false (p. 129). The trial court had held that the oath was false and the certificate illegally procured. The opinion of this Court was on the question of fact, reversing on the ground that the charge was not proven by clear, convincing and unequivocal evidence. But Mr. Justice Douglas, concurring, took the position that when the statutory requirements of a naturalization judgment are in the record,

i. e., when it is fair upon its face, its sufficiency to support the judgment cannot be questioned (p. 164), which means, as we interpret, that all those matters, subjective in nature, submitted by Congress to the decision of the Naturalization Court upon issues is res adjudicata. And Mr. Justice Rutledge also concurring was of opinion that Congress had no power to submit the naturalization of citizens to the Courts for judicial determination with a string on the applicant to pull him back to the status of an alien at will; i. e., that the judgment of the Naturalization Court upon the issuable facts, becomes final and may not be reviewed collaterally or the facts tried out de novo, which means that the naturalization judgment is res adjudicata on those matters referred by Congress to its designated naturalization courts.

The defendant is bound by the judgment, *if against him*, on that doctrine, and so must the United States be.

All of which is consistent with the right of the United States to collaterally attack a judgment of naturalization on the ground that some jurisdictional fact necessary to its validity is missing, rendering it void. A void judgment may be attacked anywhere, any time, but a judgment is not void which has been entered upon a controverted issue, if the Court has jurisdiction to decide the issue. Such a judgment is res adjudicata between the parties and not subject to be again litigated. It becomes a fixed fact, indisputable.

III

The trial in the District Court and the decision in the Circuit Court of Appeals violate the positive rule announced in the Schneiderman case and confirmed in the Baumgartner case—that to support a decree canceling a certificate of naturalization — conduct prior to the naturalization judgment must be clear, unequivocal and convincing; and that conduct as a naturalized citizen subsequent to the naturalization judgment is of little relevancy.

The clouds had been gathering for a year or two prior to the decision of the *Schneiderman* case, and there had developed a policy and movement in the Government to group together for trial persons charged with having obtained their naturalization certificates by fraud and illegality. Such trials were developing in all or most of the Circuits. It was in light of that condition that the *Schneiderman* case was argued, considered, re-argued, re-considered, and decided; and the rule announced was obviously made to aid trial courts and Appellate tribunals in disposing of the many cases working their way through the dockets, as the opinion indicates.

In the *Schneiderman* case, decided June 21, 1943, this Court changed the civil evidence rule in denaturalization cases from probability to clear, convincing and unequivocal evidence that leaves no doubt; and, holding that such measure applies to expressions and conduct in the period prior to the judgment of naturalization, and holding that conduct and expressions after being made a naturalized citizen were of little relevancy in determining the mental attitudes and behavior prior to the admission to citizenship.

When this Court filed its opinion in *Schneiderman* v. *U. S.*, 320 U. S. 118, its far-reaching effect became immediately known. It had been publicly known that it had been ar-

gued and re-argued, and when decided the public press carried its import and the opinion became available to judges and attorneys.

The group of Milwaukee cases had been prepared while the *Schneiderman* case was pending in this Court and under consideration; this case was filed on February 3, 1943; on May 12, 1943 motion was made to consolidate the several pending cases and on June 16, 1943 the order of consolidation was entered.

On June 21, 1943 the *Schneiderman* case was decided. On June 30, 1943 the Circuit Court of Appeals for the Seventh Circuit filed its opinion in *U. S.* v. *Krause*, 136 F. 2d 935, in which it considered the effect of the *Schneiderman* case on the Bund cases, and instead of following it, held, in effect, that the *Schneiderman* case was an isolated case and was not intended to affect the theory on which denaturalization cases had been tried up to that date, i.e., by considering the evidence of the whole conduct of the applicant before and after naturalization and down to the date of trial as of equal relevancy.

On September 10, 1943 a pretrial conference was held in the Bund cases and a plan of procedure was adopted. The statements of the trial judge made on that date are not in the record; but, on the opening of the trial of the case on September 21, 1943, for the benefit of some who were not present at the pretrial conference, the trial judge announced his position with reference to the relevancy of the statements and conduct of the defendants.

The trial judge, I feel it my duty to say, purposely did not follow the rulings of this court in the *Schneiderman* case. His refusal or failure to do so was on the ground that the Circuit Court of Appeals of the Seventh Circuit had held that this Court had not overruled the long line of cases in which citizens had been denaturalized on proof of acts and expressions years and years after naturalization;

and his hesitancy to follow the ruling of this court was that he felt "bound to follow" the interpretations put by the Seventh Circuit Court of Appeals upon the rulings of this Court in the *Schneiderman* case, regardless of his personal interpretations,—for he remarked to all counsel and litigants in advance of trial how he would rule. At the pretrial conference he stated his position and at the opening of the mass trial he reiterated it, remarking:

> "I should repeat here what I said at the pretrial conference, that it will be my *endeavor* in this case to apply the rules as laid down by the Supreme Court *and as interpreted by our Circuit Court of Appeals of the Seventh Circuit.* It may well be that their interpretation *does not entirely coincide with some other Circuit Courts of Appeal, but I feel bound to follow as nearly as I can their opinion in this matter, their ideas, their interpretation*" (Mass trial Record, p. 18).

That was the viewpoint of the trial Judge when he started and which he consistently maintained throughout the trial; and when the *Baumgartner* case was here decided, and he had seen the opinion before he filed his findings, he added a comment to his findings, that he had seen the *Baumgartner* opinion but still adhered to his viewpoint that the subsequent conduct of petitioner proved petitioner guilty of fraud beyond all doubt and refused to rule that the subsequent conduct of petitioner was not relevant or controlling (Tr. 43).

It is of marked significance that along with his comment on the *Baumgartner* case the trial Judge filed an opinion in support of his findings and conclusions in which *he did not mention the Schneiderman case; he did not try to follow it, he ignored its rule, teaching, and logic.* On the contrary his opinion cites the line of extreme cases where citizens had been denaturalized on subsequent conduct, and the doctrine of all of which was overruled by the *Schneiderman* and

Baumgartner cases, and some of which were later reversed in their Circuit Courts of Appeal.

In his opinion the trial judge relied upon the case of *U. S.* v. *Krause*, 136 Fed. 2d 935 (Seventh Circuit), in which that Court said that it did not believe that this Court intended to overrule the long line of cases in which subsequent conduct and expressions had been relied upon as competent proof; there was no prior conduct shown in that case; so it would appear that the Seventh Circuit Court of Appeals was appraising the rule announced in the *Schneiderman* case as isolated and as applying to its own peculiar facts for it says (P. 939):

> "We are convinced that in the case at bar (Krause case, 136 F. 2d 935, 939) the Government *did sustain* the burden of proving that appellant's *conduct and expression in later years* were opposed to the principles of the Constitution. *Applying the long line of cases* (none cited) *the* (Supreme) *Court does not overrule in the Schneiderman case*, we are further convinced that *such conduct and expression may be relied upon to* show that the oath of allegiance was taken with such mental reservations as to render it wholly nugatory, and that being the case, that the certificate of citizenship issued in reliance thereon was *illegally procured*." (Italics for emphasis.)

From that statement it is seen that there the affirmance was based on "conduct and expression in later years."

That is the ruling of the Seventh Circuit Court of Appeals made in face of the expression of this Court in the *Schneiderman* case (P. 147):

> "Since the immediate problem is the determination with certainty of petitioner's beliefs from 1922 to 1927, events and writings since that time have little relevance, and both parties have attempted to confine themselves within the limits of that critical period."

And the trial court, following the ruling in the *Krause* case, ignored the rule of the *Schneiderman* case and adhered to his decision in face of the positive statement in the *Baumgartner* case appearing in the Concurring Opinion of the Justices who wrote the opinion in the *Schneiderman* case (P. 678):

> "The decision in the Schneiderman case was not merely a decision of an isolated case. It was a formulation by a majority of the court of a rule of law governing all naturalization proceedings."

And that, with certainty, meant this case which he was then deciding.

Your petitioner respectfully suggests that the Seventh Circuit Court of Appeals appears by its opinions not to have grasped the basic significance of the increase in the degree of proof of prior conduct, and the depreciation of the relevancy and value of subsequent conduct and expression, wrought by the decision in the *Schneiderman* case, and as confirmed in the *Baumgartner* case, and that the Seventh Circuit is out of step.

Other Circuit Courts of Appeal and District Courts are following those rulings.

The Fifth Circuit Court of Appeals recognized the change in reversing the trial Court in *U. S.* v. *Meyers* 141 F. 2d 835, 826, 832. And the Judges in the Ninth Circuit also follow on the same theory, in *Bergman* v. *U. S.* 144 F. 2d 34; also *U. S.* v. *Kusche* 56 F. Supp. 201, 238-239. The Second Circuit follows, *U. S.* v. *Rossler*, 144 F. 2d 576; as also the Fourth Circuit, *Orth* v. *U. S.* 142 F. 2d 898.

The Cases Relied on by the Trial Court

These are thumbnail sketches of the cases the trial Judge relied upon in preference to the rule in the *Schneiderman* and *Baumgartner* cases.

U. S. v. *Krause* 136 F. 2d 935 where a certificate was cancelled for subsequent conduct, which that Court spoke of as "illegally procured."

U. S. v. *Chuckardt* 49 F. Supp. 567, where a certificate was cancelled in reliance upon *U. S.* v. *Baumgartner* 138 F. 2d 29, 47 F. Supp. 622 subsequently reversed; and *U. S.* v. *Bergman* 47 F. Supp. 675, which was subsequently reversed in 144 F. 2d 34, in reliance upon the *Schneiderman* case.

Schurmann v. *U. S.* 264 Fed. 917 where Schurmann's Certificate issued in 1906 was cancelled for statements made in 1917.

U. S. v. *DeTolna* 27 F. 2d 984, where his certificate was cancelled on his *admissions* that his witnesses were not qualified; which case was *properly decided* because the certificate was *illegally procured.*

U. S. v. *Kuhn* and 19 others, 49 F. Supp. 407, decided before the *Schneiderman* case where preponderance was the rule and reliance was placed on the subsequently reversed *Baumgartner* case. The case of those of the defendants who appealed were reversed, 144 F. 2d 576 in reliance upon the *Schneiderman* and *Baumgartner* cases.

Turley v. *U. S.* 31 F. 2d 696 decided before the *Schneiderman* decision and where the conduct of the defendant was held relevant down to the date of the trial.

U. S. v. *Orth* 51 F. Supp. 682 which was subsequently reversed, 142 F. 2d 969.

U. S. v. *Holtz* 54 F. Supp. 63 where the trial Court applied the doctrine of "relation back" and which case has clearly ignored the rulings in the *Schneiderman* and *Baumgartner* cases.

The trial Court, it is obvious, made no effort to decide this case upon the evidence of actions and statements of petitioner prior to his admission as a citizen, or even to evaluate them separately.

The record is top heavy with evidence as to what was said and done after April 13, 1937. There is nothing in this record transpiring prior to April 13, 1937, that can be said to be inconsistent with petitioner's application for citizenship or with his oath of allegiance, or tending to show that any fraud was practiced upon the government or court, or that petitioner in anywise perjured himself or misrepresented any fact; and none that his witnesses were in any wise incompetent or untruthful.

In fact there was no attack made upon the regularity and conclusiveness of the record of the Wisconsin State Court, nor is there such thought in the form of, or charges in, the complaint.

The sayings and doings of petitioner after April 13, 1937 are practically of no probative effect. Petitioner was then a citizen; and, if what he did as a naturalized citizen was permissible to a native born citizen, and there is no contention that it was not, then the fact that he exercised the prerogative of the native born, should not be heard as evidence that fraud and perjury were theretofore committed at the time he was naturalized.

Proof of things legally permissible to a native born citizen is no evidence of criminality if done by a naturalized citizen.

In the *Schneiderman* case this Court said that actions and expressions after an order of naturalization are of little relevance and that the five year period prior to admission was the critical period of inquiry (P. 147).

In the *Baumgartner* case it is said in the concurring opinion that the decision in the *Schneiderman* case "was not merely a decision of an isolated case. It was a formulation by a majority of the Court of a rule of law governing all denaturalization proceedings" (P. 678).

The Court's opinion in the *Baumgartner* case points out that what is done after naturalization is not done by an

alien *but by a citizen* with all the rights of the native born. The opinion in the *Baumgartner* case says:

> "New relations and new interests flow, once citizenship has been granted. All that should not be undone unless the proof is compelling that that which was granted was obtained in defiance of Congressional authority." (P. 675).

The concurring opinion in the *Baumgartner* case points out that a newly naturalized citizen "does not lose the precious right of citizenship because he subsequently dares to criticize his adopted Government in vituperative or defamatory terms" (P. 629).

We respectfully suggest that where, in view of the expressions of this Court in the *Schneiderman* case, the trial Court and Circuit Court of Appeals did not separate nor appraise separately the facts according to the periods before and after naturalization, and did not give them their relative significance and weight, it becomes obvious that the Circuit Court of Appeals ignored the rulings in the *Schneiderman* case, and that the trial court purposely followed the ruling of the Circuit Court of Appeals.

The viewpoint of each court is out of harmony with the decisions of this Court in the *Schneiderman* and *Baumgartner* cases and in conflict with the rulings and decisions in other Circuits, and it is respectfully suggested that this court should take this case for decision.

IV

The complaint being one for intrinsic fraud does not state a cause of action in equity, and the court is without jurisdiction of subject matter.

The complaint in this case does not state a cause of action in equity to vacate the judgment of a court of co-ordinate jurisdiction: where the scope and purpose of the

complaint is to overturn the judgment on the ground of intrinsic fraud no statement of facts however detailed will aid it. Here only ultimate facts are pleaded but it plainly shows that it seeks relief from intrinsic fraud and nothing else.

The charge in the complaint that the statements and oath of petitioner were false and fraudulent as to subjective matters submitted to the Courts by Congress for decision, upon evidence to be adduced, does not overcome the force and effect of the admittedly valid judgment of the Wisconsin State Court upon that very evidence, which stands as a thing decided between the parties. The force of the adjudication of the Wisconsin State Court, which admittedly had jurisdiction to hear and decide, is stronger than the abstract charge of fraud in reference to the adjudication of subjective issues specifically entrusted to it by the Congress.

Judgments of naturalization are not vacated as matter of course, and Congress could have had no intention of making judgments of naturalization vulnerable to abstract charges of fraud. Citizenship is not so cheap.

The obvious effort of petitioner to protect the Milwaukee citizens of German descent from the natural prejudice of the day, judging from the publicity given to his acts, was known to the State Court officials, the Federal officials, and every one connected with naturalization, as well as the Public, at the time petitioner applied, and when his petition was heard. There was no secrecy about it. If there was any perjury or coloring of facts in the case, it would not have escaped notice of the Judge of the State Court who had before him the investigations and recommendations of the Federal Investigators in the file, and who doubtless knew the local color.

His acts were not then considered to be of such nature as to bar his application for citizenship; how much less

are they now a cause for vacating the judgment of naturalization?

Time ran, war came and the viewpoint of officials changed.

The bare allegation of intrinsic fraud, stated in the form of a conclusion, has made this record of 2500 pages of testimony, and hundreds of exhibits, possible.

V

The findings of the Trial Court and the judgment of the Circuit Court of Appeals reflect the influence of war hysteria.

The record in this case is too voluminous to attempt to discuss more than its outlines and the times and political atmosphere out of which this case grew, and did not grow. It is thought that a few sentences might not be inappropriate to refresh recollection of the era in question, the period in which petitioner's conduct is to be judged.

It was a peacetime era. Hitler had not taken Austria; Munich appeasement had not been given; Czechoslovakia had not been invaded; Poland had not been attacked.

The star of Hitler was in its ascendency. Rulers, emperors, kings, prime ministers, were visiting him, not he them. A new hero had arisen for worship. Napoleonic days were here again. Millions paused to admire. It was in that era of old world politics that petitioner was on probation awaiting the days of his citizenship.

The world was full of new movements headed mostly by young, ambitious men. Corporal Hitler, Corporal Mussolini, Corporal Stalin, Sergeant Batista, General Franco had come of ruler age. So had others of World War I era. The Soviet, Nazi, Fascist, New Deal of France, New Deal of the United States, were each supposedly liberating, saving humanity, in its own way. It was ambitions' hour, and the day of exaggerated ego.

All of the German American activities in question were peacetime activities. It was all legal. It was national ferment. American politics organizes groups for political prestige. No one objects. It's American life. There are the thousands of societies, organizations for this and that.

There was no incon istency in any alien being active along with citizens in such matters and at the same time applying for citizenship. Why not, that is what the citizen does.

The thought of 1937 found no objection.

The thought of the war era looks back and finds things not to its liking. It objects.

When this case was tried a different world was functioning than existed in 1937. Germany had declared war on Poland, England and France had declared war on Germany. Pearl Harbor was past tense and we were at war with Germany and Japan, and Russia had become involved; the Balkan countries were overrun and Germany had overrun the lowlands and Norway. France had surrendered and England, the United States, Russia, China and the world generally were engaged in a mighty struggle. It was World War II traveling in high.

That was the era in which this trial was planned and commenced. By that time there were accumulated hatreds, exaggerated expressions, that warped the feel of justice. This case was tried with war hysteria in full swing. Hatreds were preached. Our Japanese citizens were referred to as monkey men and the Hun was at his atrocities again. Men were fighting, dying. That was the backdrop for the trial of the peacetime case of 1937. It was being interpreted in terms of war.

Great men of this country had been cursed for neutrality and smeared, as the expression is, and discredited, when their highest thought was the good of their country. It

is so in every wartime era. They cry peace but there is no peace.

There is assumption in this case that everything petitioner did was wrong and a part of Germany's war effort.

Almost the entire opinion of the Circuit Court of Appeals is taken up with a vigorous denunciation of the Bund, its purposes and its program; and the whole argument of the findings of the trial judge is taken up with the same thought.

Strike out what is said on that topic and there is no basis to either the findings of the trial judge or the opinion of the Circuit Court of Appeals. It is based on war when there was no war at the time in question.

The District Attorney could not prove, and did not prove, that petitioner was a Bund member. He called defendant as his witness for cross-examination and had him on the stand a day and a half (*Knauer* record pages 156-384) in an effort to prove it and finally put the direct question to defendant whether he were a member of the Bund and the answer was, "Never."

> Mr. Becker: Q. Were you a member of the Bund?
> A. Never.
> Q. Did you ever sign any petition or written document of any kind for membership in the Bund?
> A. Never. (*Knauer* case, testimony page 365.)

The trial judge had already held that membership in the Bund was not in itself sufficient to prove fraud which would warrant a judgment of cancellation of a naturalization decree (Conclusion to Mass Trial evidence, Tr. 27).

It was also found that one of the purposes of the Bund was to keep America out of the war (Finding 15, Tr. 24). The war started September 3, 1939. Petitioner was admitted to citizenship April 13, 1937, two and a half years before war was declared.

The trial court found that petitioner had joined the German-American Alliance shortly before his naturalization. It was a chartered organization under Wisconsin law and its purposes were to unite unto a union and federation all societies in Wisconsin whose members were of German origin and preserve all rights unabridged which the Constitution of the United States guarantees to its citizens and people of this nation and to support and maintain the Constitution in its integrity (Exhibit PK13, *Knauer* Record 463).

These matters are suggested to indicate that only one side of this case appears in the findings of the trial judge and that when the evidence is placed before the court in a comprehensive manner it will sufficiently appear that there was nothing inconsistent in petitioner's conduct and the highest esteem for the liberties guaranteed by our Constitution and laws.

Conclusion

It is, therefore, respectfully suggested that the questions here urged are not idle, or frivolous, but substantial; that the Decree of the District Court and the judgment of the Circuit Court of Appeals affirming it, have operated to deprive petitioner of equal protection of the laws and the basic rights of naturalized citizens to the guaranteed freedoms upon faith of which they seek naturalization; and for the exercise of which petitioner here has been in effect expelled.

Wherefore, it is respectfully suggested that in the interests of justice, the Writ of Certiorari should be granted as prayed.

All of which is respectfully submitted.

Ode L. Rankin,
Counsel for Petitioner.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 510

PAUL KNAUER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY OF PETITIONER TO BRIEF AND ARGUMENT OF THE UNITED STATES.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 510

PAUL KNAUER,

Petitioner,

vs.

UNITED STATES OF AMERICA.

REPLY BRIEF OF PETITIONER.

I.

The Solicitor General has not replied to the legal contentions made in the argument supporting the petition for certiorari. He says in his argument (p. 12) that in his brief filed in the *Baumgartner* case, 322 U. S. 665, he discussed at length the question whether a judgment of naturalization is *res adjudicata* of the right to citizenship. The action of the Solicitor General in referring to his arguments in another case on this important question operates to place petitioner at a great disadvantage here as it deprives his counsel of an opportunity to reply thereto.

If the arguments referred to as having been made elsewhere were in anywise persuasive they should have been given space in his brief filed in this cause. It can only be concluded that such arguments do not answer the particular viewpoints advanced in the petition and brief filed herein.

But this much is certain,—this Court has never decided that question of *res adjudicata* adversely to the contentions made by petitioner. On the contrary the views expressed in *Ness* v. *U. S.*, 245 U. S. 319, by Justice Brandeis, and those stated by Justice Douglas and Justice Rutledge in the *Schneiderman* case, indicate that the point is well taken. And since the decision of *Tu Tun* v. *U. S.*, 270 U. S. 568, the Government must appeal if it would have a record reviewed for errors in the proceeding.

The question was raised in the *Schneiderman* case, 320 U. S. 118, 124, but not decided, and if argued, as the Solicitor General says, in the *Baumgartner* case, it was not there decided. Each of these cases were decided upon the facts in the record, each holding that the evidence adduced was not sufficient to sustain the action of the trial court in canceling the certificate of naturalization.

In the *Schneiderman* case, 320 U. S. 118, the decision involved illegal procurement only. The majority opinion, holding that there was not sufficient proof to support the judgment of the trial court, went no further. But Justice Douglas and Justice Rutledge, each concurring in separate opinions, based their views on the rule of law here contended for by petitioner.

The question does not appear to have been mentioned in the *Baumgartner* case. But Justice Frankfurter indi-

cates in the opinion written by him that the court was not unmindful of the fact that there was a prior adjudication to be dealt with. The opinion says (p. 675):

> "But where the claim of 'illegality' really involves issues of belief or fraud, proof is treacherous, and objective judgment, even by the most disciplined minds, precarious. That is why denaturalization on this score calls for weighty proof, especially when the proof of a false or fraudulent oath rests predominantly, not upon contemporaneous evidence, but is established by later expressions of opinion argumentatively projected, and often through the distorting and self-deluding medium of memory, to an earlier year *when qualifications for citizenship were claimed, tested and adjudicated.*" (Italics ours).

Thus it is seen that this Court recognized that an applicant becomes a citizen by virtue of a judicial decree or judgment which, at least, is not lightly to be overturned.

The substance of the position of the Solicitor General is that this action to denaturalize is in reality a trial *de novo* of the naturalization proceeding and upon the same evidence as existed at the time of the naturalization trial, plus subsequent conduct.

The Solicitor General admits that the *Baumgartner* and *Schneiderman* cases establish the rule that *conduct subsequent to naturalization is not of itself sufficient to establish the state of mind at the time of naturalization* (p. 15). If that be true then there is no basis for the judgment of the District Court for the reason that all conduct prior to naturalization is merged in the judgment of naturalization.

The case boils down to this: All matters complained of as happening prior to the naturalization proceeding are

merged in that judgment of the State Court; and all subsequent conduct is that of a citizen for which petitioner is answerable to the law if there be anything wrong in his conduct; but if there be wrong in his conduct, denaturalization and deportation is not the punishment.

In this type of case it is said that this Court is not bound by the findings of fact made in the trial court and that the rule in the ordinary case does not relieve this Court of the task of examining the foundation for the findings in a denaturalization case (322 U. S. 665, 670-671). In view of that rule and the admission that "subsequent conduct is not itself sufficient to establish the state of mind at the time of naturalization," and of the further fact that no effort was made by the trial court to separate, differentiate, or weigh separately, the conduct before, and that following the judgment of naturalization, it is necessary for this Court to take this case for review so that all of the evidence may be given its proper relevancy. It is obvious that the whole case cannot be presented to the court within the scope of a petition for certiorari. It is assumed that the court would not wish to so prejudge the case.

II.

The Solicitor General seems to narrow the question here to one point. He states that the question presented is whether a certificate of naturalization may be cancelled upon proof that an alien procured citizenship by fraudulently declaring on oath that he renounced allegiance to the country of his origin and that he would bear true faith and allegiance to the United States. (United States' Brief, p. 2.) In view of the narrowing of the contentions of the Government to the single question of the oath of allegiance something should be said about the oath of allegiance.

The statute provides that the applicant shall, before being admitted to citizenship, take the oath of allegiance in open court. All of the declarations appearing in the oath have necessarily been adjudicated. The ideas first appear in the Declaration of Intention wherein it is stated that the declarant intends to become a citizen of the United States and will renounce all fidelity to the native land (8 U. S. C. A., Sec. 731). Again in the application for naturalization it is stated that it is the applicant's intention to become in good faith a citizen of the United States and that it is his intention to renounce all fidelity to the sovereignty of which he is subject (8 U. S. C. A., Sec. 732). And then in the oath taken in open court, before he is admitted by the decree of the court, the applicant makes oath that he does then and there renounce and abjure all allegiance and fidelity to his native land or sovereign and that he will support and defend the Constitution and laws and bear true faith and allegiance to them and does so without mental reservation (8 U. S. C. A., Sec. 735).

The oath of allegiance follows upon the adjudication by the court that all necessary facts exist which enable the applicant to be and become a citizen. Taking the oath of allegiance is the step by which the applicant renounces his native country and attaches himself to the United States, and upon which the United States accepts him as a member of its citizenry.

Where there is jurisdiction to adjudicate a petitioner to be a citizen, and the adjudication is made, only the oath of allegiance is needed to complete the process. It is the judgment that qualifies the applicant to become a citizen; it is the oath that binds the applicant to fealty and makes him a citizen. An oath of allegiance would not be necessary except that Congress exacts it as an objective action that is readily provable.

The oath of allegiance cannot be detached from its mooring and considered as a thing apart. It is an essential part of the judicial proceeding and is entered into in open court as a part of the hearing and is allowed only after the court has adjudicated the very facts the oath contains. The facts contained in the oath are *res adjudicata* in the proceeding.

The minds meet when the court adjudicates that the jurisdictional facts are present and the applicant swears allegiance to his new sovereign. From that point on, neither may deny the right of the other.

It is not believed that the question of fraud in taking an oath of allegiance can be raised as is asserted here by the Solicitor General. It is not denied that an oath was taken as required by statute. That stands admitted. When the oath is taken the applicant is bound to the sovereign and may not be heard to say that he did not mean it, or that he had mental reservations; for immediately upon the taking of the oath the Government may exact every obedience from the new citizen as if native born.

And conversely the new citizen may ask every protection guaranteed under the Constitution and laws.

The oath taken is obviously binding upon the applicant. By it he renounces his allegiance to his native land and by it he owes fealty and allegiance to the United States. He cannot be heard thereafter to contradict it, and grave doubt exists if the Government, taking and accepting the oath, should be heard to challenge it.

If an oath is taken in court to testify to the truth, the witness is qualified to testify. If he commits perjury he is punished for his act, as a witness, but he is still a witness.

An oath of office qualifies the office holder. He then owes to the public the duties of his office and cannot be heard to deny his oath. Nor can the Government he serves question his oath.

When parties are married they may not later claim mental reservations and deny the obligations of the marriage.

It is the oath of allegiance that qualifies the applicant to be a citizen. The oath seals the mutual undertakings of the parties and the applicant cannot then be heard to say to the contrary, nor can the United States raise the question of mental reservations in the taking of the oath. There can be no mental reservations in an oath. It is taken without mental reservations, and none can be asserted.

If there were no oath taken the tendered citizenship would not for that reason operate or become effective. But where the oath was admittedly taken it is conclusive upon both parties.

If there is an oath taken in due legal form, as required by the Government's forms, it cannot be adjudicated to be void upon any ground of mental reservation.

Perjury is based upon the validity of the oath, not upon any mental reservations in the mind of one who takes the oath.

The Oath Creates the Status of Citizenship.

An oath of allegiance is a pledge of fealty. It cannot be recalled by the maker and when accepted and acted upon by the Government it is binding on both parties and the new status cannot be overturned or set aside upon

any thought that the oath is not binding. The oath is binding.

Suppose some treasonable conduct were indulged in after the oath were taken, can it be said that the Government shall have the option to treat the oath as fraudulent and cancel the certificate of naturalization, or to prosecute for treason and punish for that crime?

Obviously when the Government may punish the naturalized citizen for some crime because he is a citizen, then the oath must make him a citizen when the oath is taken. The oath here creates the *status* of citizenship.

The Government should not be heard to raise the question that an oath of allegiance was made with reservation, years after it received it as binding evidence of naturalization. If it is permitted to do so, no naturalized citizen may say his citizenship is safe for prior adjudications will not protect him.

In this case the Solicitor General admits that the naturalization proceeding in the State Court had every jurisdictional element; that it took the oath and gave the certificate of naturalization; and the Government is here estopped to challenge that record except for extrinsic fraud or lack of some jurisdictional element and no such defect is claimed to exist.

III.

Nothing is said by the Solicitor General about the subject of extrinsic fraud or intrinsic fraud and it must be assumed that he considers as well taken the point that only intrinsic fraud is pleaded in the complaint and that the judgment of naturalization in a State Court cannot be overturned on a complaint alleging intrinsic fraud.

IV.

The Solicitor General does not attempt to justify the action of the trial court in following the decision of the Seventh Circuit Court of Appeals in the case of *U. S.* v. *Krause*, 136 Fed. 2d 935, which refused to follow the *Schneiderman* case and which affirmed a judgment based solely upon conduct subsequent to the naturalization. Nor, does he attempt to justify the said Seventh Circuit Court of Appeals in its failure to notice the *Schneiderman* case in deciding this case and holding that there was no resemblance to the *Baumgartner* case.

In fact there is no reasonable justification for those acts and decisions. They appear to be wholly arbitrary.

V.

When this Court comes to a full consideration of all the facts in this case it will appear that the conduct of appellant was under great provocation and oppression and that he was trying to uphold the rights of naturalized citizens under our laws and Constitution.

In the *Baumgartner* case Justice Frankfurter points out that many Americans were confused over the situation in Germany. He says:

> "And during a period when new strength of the land of one's nativity was flamboyantly exploited before its sinister meaning had been adequately revealed even to some Americans of the oldest lineage, such old cultural loyalty, it is well known was stimulated into confusion of mind and sometimes to expressions of offensive exhuberance" (p. 674-675).

And there it is said that such views do not "necessarily prove want of devotion to the nation" (p. 674).

We are all learning now, the value of "hindsight". Many things are being daily revealed that were never known or dreamed of by the average person, which put a wholly different aspect to things than was known or suspected in 1937; but petitioner here is charged as if he knew all that has been learned since the war began in 1939.

All of which makes it more imperative that this case should be taken for review, for it is obvious that war hysteria is the basis of the action and the judgments below.

Conclusion.

The Solicitor General concedes every jurisdictional fact necessary to admit petitioner to citizenship. The admission is the equivalent of *res adjudicata*. His only challenge is to the oath of allegiance which is an essential part of the judgment of the State Court the facts of which are *res adjudicata*. The facts in the oath were adjudicated; otherwise the court would not have admitted petitioner to citizenship nor have accepted the oath.

On principle the United States should not be heard to challenge the sufficiency of the oath of allegiance which it exacted as a condition precedent to the judgment of naturalization and the issuance of the certificate of naturalization.

Wherefore this Court should take this case for consideration upon the merits and direct the writ of certiorari to issue, which is respectfully requested.

Respectfully submitted,

Ode L. Rankin,
Attorney for Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF PAUL KNAUER, PETITIONER.

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I.

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Intrinsic fraud is not remediable in equity 19

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II.

Where the necessary jurisdictional facts are in a naturalization record, a decision of the naturalization court upon subjective issues is res adjudicata, and the remedy for erroneous appraisal of the facts, or false swearing, is by application to the naturalization court for a reconsideration of the issues, and, if not allowed, appeal therefrom to correct errors. Equity is not the forum for such relief 24

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III.

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IV.

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V.

The trial in the District Court and the decision in the Circuit Court of Appeals violate the positive rule announced in the Schneiderman case and confirmed in the Baumgartner case,—that to support a decree cancelling a certificate of naturalization conduct prior to the naturalization judgment must be clear, unequivocal and convincing; and that conduct as a naturalized citizen subsequent to the naturalization judgment is of little relevancy 42

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VI.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945.

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA.

BRIEF OF PAUL KNAUER, PETITIONER.

This proceeding involves the validity of the certificate of naturalization granted to Paul Knauer by the Circuit Court of Milwaukee County, Wisconsin, on April 13, 1937, which, on complaint of the District Attorney filed on February 13, 1943, in the District Court for the Eastern District of Wisconsin, sitting at Milwaukee, was revoked and cancelled for alleged fraud in the proceedings wherein it was granted.

The Circuit Court of Appeals, on appeal by petitioner, affirmed the judgment of the District Court.

At this term on December 10, 1945, this Court granted certiorari to the Seventh Circuit Court of Appeals to bring up the record of said denaturalization proceeding for further review.

The Opinions Below.

The Opinion of the Circuit Court of Appeals is found in the printed transcript of the record at pages 83 to 96 and is reported as *United States* v. *Knauer,* 149 F. (2d) 519.

In the District Court fourteen similar cases were consolidated for trial and Honorable F. Ryan Duffy, trial judge, in passing upon the mass trial evidence, filed a written "memorandum opinion with findings of fact and conclusions of law on common issues consolidated for trial", which appears at pages 19 to 28 of the printed transcript of record.

Also Judge Duffy filed an "Opinion, findings of fact, and conclusions of law" at the end of the trial of petitioner which is found at pages 28 to 43 of the printed transcript.

Grounds of Jurisdiction.

The judgment of the Circuit Court of Appeals became final on June 28, 1945, when petition for rehearing was denied (Tr. 97), and Mr. Justice Rutledge entered an order on September 22, 1945, extending the time for filing the petition for certiorari herein to October 15, 1945. The petition for certiorari was filed within that time and certiorari was granted on December 10, 1945.

The jurisdiction of this Court is invoked under Section 237B of the Judicial Code as Amended, 43 Stat. 927, 28 U. S. C. A., Sec. 344 (b).

In maintaining inviolable the great privilege of American citizenship this Court has declared itself not bound by the findings of provincial courts and has reserved to itself the task of itself examining the findings in denaturalization cases (*Baumgartner* v. *U. S.*, 322 U. S. 665, 670-671).

STATEMENT OF THE CASE.

Petitioner Naturalized in 1937.

Paul Knauer was born at Saulfield, German, March 3, 1895, came to the United States in April, 1925, filed a declaration of intention of becoming a citizen of the United States on December 4, 1929, and on November 20, 1936, filed his petition for naturalization in the Circuit Court of Milwaukee County, Wisconsin, a court of unlimited jurisdiction.

On April 13, 1937, Knauer's application for citizenship was heard by said State Court and said Court found that Knauer was entitled to admission to citizenship, and accordingly the required oath of allegiance was administered to and taken by him; that thereupon the Court entered its judgment admitting Knauer to citizenship, and pursuant to such judgment, the Clerk of said State Court issued to him a certificate of naturalization.

Complaint to Denaturalize Filed February 3, 1943.

On February 3, 1943, the District Attorney of the United States for the Eastern District of Wisconsin filed in the District Court of the United States for the said District at Milwaukee, Wisconsin, a complaint charging that Knauer had fraudulently obtained said decree and Cer-

tificate of Naturalization from said Wisconsin State Court and therein represented to the Court that in his said petition for naturalization Knauer had represented and set forth under oath as required by law among other things as follows:

> "I am attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. It is my intention to become a citizen of the United States and to renounce absolutely and forever all allegiance and fidelity to any foreign prince, potentate, state or sovereignty, and particularly to the German Reich, of whom (which) at this time I am subject (or citizen), and it is my intention to reside permanently in the United States."

That thereafter on, to wit, the 13th day of April, 1937, Knauer took the following oath of allegiance in open court as required by law:

> "I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the German Reich of whom (which) I have heretofore been a subject (or citizen); that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion; So help me God. In acknowledgment whereof I have hereunto affixed my signature."

That on the same date, the 13th day of April, 1937, the said Circuit Court of Milwaukee County, Milwaukee, Wisconsin, relying on the truth and good faith of the representations made by Knauer in his petition for naturalization and in his oath of allegiance, entered its order admitting him to citizenship in the United States and thereupon certificate of naturalization Number 4,188,490 was issued to him by the Clerk of said Court.

That all of the representations aforesaid made by Knauer in his petition for naturalization were false and fraudulent in that he was not in fact attached to the principles of the Constitution of the United States at the time of the filing thereof nor during the five years prior thereto; in that he did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich of which he was then a subject, but in fact intended to retain allegiance and fidelity to the said the German Reich; and in that he did not in fact intend to reside permanently in the United States.

That all of the said representations made by Knauer in his oath of allegiance were likewise false and fraudulent in that he did not in fact renounce and abjure all allegiance and fidelity to the said the German Reich; in that he did not in fact intend to support the Constitution and laws of the United States of America against all enemies, foreign and domestic; and, in that he did not, in fact, intend to bear true faith and allegiance to the same, but in fact did intend to remain a subject of the German Reich and to maintain his allegiance thereto.

That the said certificate of naturalization was procured by Knauer (amended on hearing to read "fraudulently and therefore illegally"), fraudulently and illegally, and for the purpose of obtaining the rights, privileges and protection of American citizenship without intending to assume the duties thereof, and that said certificate of naturalization is subject to cancellation.

The petition of the District Attorney prayed that an order be entered revoking and setting aside the order of admission of Knauer to citizenship, cancelling the said certificate of naturalization, directing surrender up thereof for cancellation, and that Knauer be forever restrained and enjoined from claiming any rights, privileges, bene-

fits or advantages whatsoever under said order of admission to citizenship and said certificate of naturalization; that a certified copy of such order be mailed to the Commissioner of Immigration and Naturalization of the Department of Justice and to the Clerk of the Circuit Court of Milwaukee County, Milwaukee, Wisconsin.

The said complaint was not under oath.

Knauer appeared *pro se* in said proceeding and conducted his own defense in the District Court.

Answer of Petitioner.

Knauer answered said complaint and admitted that he made the said quoted representation of attachment, renunciation and intentions and made the above quoted oath; that he was admitted to citizenship by said State Court, and was granted said certificate of naturalization by the court which was issued by the clerk of said court.

Further answering the said charges, Knauer denied (Tr. 4) all charges therein made against him, claiming that his purposes were high; that he had been examined by governmental agencies as to his knowledge and belief in the American form of government; that he called two competent witnesses to verify his character, his qualifications for citizenship and his beliefs; all of which were found to be above reproach and in full accord with his statements and declarations made in his said Petition; that with a clear conscience, and, without any mental reservation or purpose of evasion whatsoever, he swore to renounce and abjure all allegiance and fidelity to the German Reich of which he had theretofore been a citizen and likewise to support and defend his newly adopted homeland and to uphold, support and defend its Constitu-

tion and laws against all enemies, foreign and domestic; that he did not commit any illegal act to obtain his naturalization papers, and that he did not acquire his Certificate of Naturalization fraudulently and falsely; that he definitely intended to bear true allegiance to the United States and did not intend to remain a citizen of the German Reich (Tr. 4-10).

Knauer further alleged in his said Answer that the said proceeding to denaturalize him was in violation of the 14th Amendment to the Constitution, which provides that all persons of the United States, born or naturalized therein, are entitled to equal privileges and immunities; that the Nationality Act of 1940 should be held to be a criminal statute and a jury trial allowed and, unless so construed, would violate the 6th Amendment of the Constitution; and violates the 8th Amendment to the Constitution, and is an *ex post facto* law violating Article 1, Section 9, Paragraph 3 of the Constitution and that it violates the due process clause of the 5th Amendment to the Constitution (Tr. 7-8).

The United States did not reply to said Answer.

Cases Consolidated for Mass Trial.

About the time of the filing of this case, the District Attorney for said District filed a large number of similar cases and on May 12, 1943, a motion was made to consolidate this case with thirteen other similar cases with the avowed purpose of determining in one trial an issue of fact claimed to be common to all fourteen cases, and thereafter to try the remaining issues in each case separately and in *seriatim* (Tr. 11). The motion, supported by affidavit of the Assistant District Attorney (Tr. 12) was resisted by Knauer (Tr. 15), his objection overruled,

and an order entered (Tr. 16) consolidating said fourteen cases for the purpose of receiving evidence

> "concerning the organization, aims, purposes, and activities of the German-American Bund, its National and local subdivisions, its predecessors and affiliates, including the Grafton Settlement League, Inc., subject to the usual right of cross examination and objection by each defendant."

about which matters nothing had been said in said complaint.

It was further ordered that each defendant might introduce evidence as to such issues, and that each defendant in his subsequent trial might introduce pertinent evidence as to his individual case, and that after conclusion of the trial of the consolidated issues, the trial of each individual defendant should continue separately (Tr. 18).

A pretrial conference settled the method of introduction of various exhibits, documents, newspaper articles, translations, etc. (Tr. 18).

The evidence taken in the mass hearing in typewritten question and answer form, some 1400 typewritten pages, is in the record but was never abstracted or printed; exhibits received in evidence in great numbers, and in large bulk, are in the record but have never been described in a printed record. Also the testimony taken in the subsequent and separate trial of your petitioner is in the record, in typewritten question and answer form, some 1000 pages, never having been abstracted or printed.

By order of this Court the printing of said portion of the record was excused and parties have been given leave to refer to said typewritten portion of the record and exhibits in their briefs.

The record proper, omitting evidence and exhibits, is in printed form, and filed herein.

The Mass Trial.

The mass trial was commenced on September 21, 1943, consuming approximately eight court days; some thirty-odd witnesses were examined; 1433 pages of typewritten testimony taken; 100-odd exhibits were introduced, including books, editorials, news articles, speeches, pamphlets, hearsay, broadcasts, deductions and suspicions.

The Individual Trial of Petitioner.

At the conclusion of the mass trial, the individual trial of your petitioner was commenced on November 22, 1943 and consumed six and one-half days, when it was adjourned on December 1, 1943, and was resumed on January 6, 1944, and another day was consumed. 1046 pages of testimony were taken and some 200-odd exhibits were introduced.

The Findings of the Mass Trial.

On May 25, 1944, the trial Judge of the District Court filed certain findings pertaining to the evidence produced in the mass trial as to ten of the defendants, including your petitioner (four having been dismissed), and all of whom, except Knauer, were subsequently found innocent of the charges.

The findings, consisting of 26 paragraphs, 1 to 26 (Tr. 18-28), state that each petition contained identical allegations as to their several intentions not to become *bona fide* citizens, in that, the mental attitude of each was opposed to the statements he made in his application and in his oath.

The Court found that the issues tried *en masse* were common to all of the cases and that the principal common issue concerned the organization, aims, purposes and activities of the German American Bund, its national and local subdivisions, its predecessors and affiliates, including the Grafton Settlement League, Inc. (Tr. 20).

The Court then holds:

> "The evidence clearly, unequivocably and convincingly, establishes that the German American Bund and its predecessor organizations were Un-American and subversive, and that the teachings were contrary to the principles of the Constitution of the United States" (Tr. 20).

The Court then concludes:

> "2. The fact that a person was a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant cancellation of a decree of naturalization" (Tr. 27).

Findings Made After Knauer's Trial.

On June 16, 1944, the Court filed a memorandum opinion with its findings in Knauer's case in which the Court said that the burden was on the plaintiff "to establish its contentions affirmatively by evidence clear, convincing and unequivocal,—to all practical intents and purposes beyond a reasonable doubt" (Tr. 30).

The trial judge further stated that most of the statements of the defendants in the consolidated cases, relied upon by the Government to show mental attitude at the time their oaths were taken, "were made before our Nation was attacked" (Tr. 30).

The trial judge did not, however, separate his findings so as to show what was done and said *before naturaliza-*

tion, and what was said and done *after the oath* of allegiance.

The "findings" of the trial judge are predominately conclusions, inferences, deductions, presumptions, inferences upon inferences.

The ultimate conclusions of the trial judge, based upon other conclusions, are that, after Knauer was admitted to citizenship in 1937, through 1941 (Pearl Harbor), his attitude toward fidelity and allegiance and attachment to the principles of the Constitution were the same as prior to the date of naturalization (Finding No. 59, Tr. 41); and that, from the conduct of Knauer through the years *before and after* his naturalization as well as the evidence *in its entirety* the Court concludes that when Knauer filed his application for citizenship, at the time of his naturalization, and at all times thereafter, he did not in good faith intend to renounce allegiance and fidelity to the German Reich, and did not in fact do so (Finding 60, Tr. 42), and the Court finds from Knauer's beliefs, so found, in and to National socialism and activities in promoting it, opposition to political and racial equality, that during said time he was not in fact attached to the principles of the Constitution and did not intend to support it (Tr. 48, Finding 61). The findings are based largely upon acts and expressions of petitioner after the date of his naturalization.

The Conclusions of Law.

The conclusions of law predicated upon the Court's findings were that the order of the Circuit Court of Milwaukee County, Wisconsin, admitting Knauer to citizenship and its Certificate of Naturalization "were fraudulently and therefore illegally procured and should be revoked, set aside and cancelled" (Tr. 43).

Court's Comments on Baumgartner Case.

The trial judge then comments that his findings and conclusions were made after he had an opportunity to examine the decision of this Court in *Baumgartner* v. *U. S.*, 322 U. S. 665, decided June 12, 1944, four days prior to the filing of his opinion and findings in Knauer's case. He then distinguishes the two cases by the statement: "Here there was evidence showing the attitude of the defendant prior to the date that he took his oath on April 13, 1937, which made him a citizen" (Tr. 43), and that the Court was convinced beyond reasonable doubt that Knauer's practiced fraud "when he obtained his Certificate of Naturalization". However, the trial judge does not say that he was convinced beyond doubt, by the evidence of what happened prior to petitioner's oath, but he relied upon the evidence in its entirety, and that he was convinced beyond douht by all the evidence (Tr. 42).

The Decree of Cancellation.

A decree was entered July 7, 1944, by which it was adjudged that the order of the Circuit Court of Milwaukee County, Wisconsin, made April 13, 1939, admitting Knauer to citizenship be revoked, set aside and cancelled, the Certificate of Naturalization issued thereon be delivered up for cancellation, and cancelled, and that Knauer desist and refrain from exercising any rights, privileges or benefits under said order and certificate (Tr. 44).

The Trial Court Did Not Follow the Schneiderman and Baumgartner Cases.

In discussing, at the pre-trial conference, the procedure to be followed at the trial, and again at the opening of the mass trial, the trial judge remarked:

"I should repeat here what I said at the pretrial conference, that it will be my *endeavor* in this case to apply the rules as laid down by the Supreme Court *and as interpreted by our Circuit Court of Appeals of the Seventh Circuit.* It may well be that their (Circuit Court of Appeals) interpretation *does not entirely coincide with some other Circuit Courts of Appeals, but I feel bound to follow as nearly as I can their opinion in this matter, their ideas, their interpretation*" (Mass trial record, p. 18).

As hereafter shown, the holding of the Circuit Court of Appeals of the Seventh Circuit in the *Krause* case, 136 F. (2d) 935, to which the trial judge referred and which he said he must follow, is out of harmony with the interpretations of other Circuit Courts of Appeal, and the decisions of this Court.

The Appeal.

Appeal from said decree was perfected, bond given, and the judgment was stayed pending appeal (Tr. 65).

The Circuit Court of Appeals has also stayed its mandate pending this appeal (Tr. 97).

The Opinion of the Circuit Court of Appeals.

The opinion of the Circuit Court of Appeals rendered in this cause is reported as *United States* v. *Knauer*, 149 F. (2d) 519.

The Circuit Court of Appeals affirmed the decree of the District Court. It did not attempt to harmonize its own opinion with either *Schneiderman* v. *U. S.*, 320 U. S. 118, or *Baumgartner* v. *U. S.*, 322 U. S. 665. Of the *Baumgartner* case it remarks that there is no resemblance to this case—and the *Schneiderman* case is given the silent treatment,—not being mentioned.

However, it is to be noted that the Seventh Circuit Court said in another and earlier case, *U. S.* v. *Krause*, 136 F. (2d) 935, above mentioned, that this Court did not, by its holdings in the *Schneiderman* case, intend to overrule the long line of cases in which subsequent conduct and expressions had been relied upon as a basis for cancellation. The *Krause* case was one of the cases relied upon by the District Court in deciding this case. Other cases of the same type are cited in the opinion of the trial judge (Tr. 29).

Other Circuit Courts of Appeal have followed the rule of evidence promulgated in the *Schneiderman* case and approved in the *Baumgartner* case and the decisions of the Seventh Circuit Court of Appeals in this case and the *Krause* cases are out of harmony with the rulings of other Circuit Courts of Appeal and those of this Court.

Specification of Errors.

The District Court erred in decreeing the revocation and cancellation of Knauer's certificate of citizenship, upon evidence which was incompetent, inconclusive, and without weight.

The District Court erred in taking jurisdiction upon the general allegations contained in the complaint alleging only intrinsic fraud in the form of conclusions, and in decreeing thereon.

The District Court erred in predicating its decree upon acts and expressions of Knauer after he was admitted to citizenship, and erred in drawing conclusions of law from acts and expressions of Knauer before and after the decree of naturalization, and in decreeing upon such conclusions.

The District Court erred in decreeing vacation of the naturalization judgment of the State Court and the cancellation of Knauer's certificate of naturalization upon evidence of intrinsic fraud.

The Circuit Court of Appeals erred in affirming the decree of the District Court.

The Circuit Court of Appeals and the District Court each erred in disregarding the rule of evidence and decision promulgated by this Court in *Schneiderman* v. *U. S.*, 320 U. S. 118, and *Baumgartner* v. *U. S.*, 322 U. S. 635.

ARGUMENT.

I.

Section 738 of the Nationality Code provides a new duty for District Attorneys, but does not create a new jurisdiction in courts of equity. The District Attorney has here asked for relief from intrinsic fraud, the remedy for which, lies in the field of error, and over which equity does not extend its remedies.

Section 738 of the Nationality Code, first enacted in 1906 and re-enacted in 1940, provides that it shall be the duty of United States District Attorneys, upon affidavit showing good cause, to institute proceedings in naturalization courts,

> "for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

As first enacted in 1906, it provided only for cancellation of the Certificate of Naturalization. As re-enacted in 1940, it was broadened to include revoking and setting aside the judgment of naturalization.

A thoughtful observation of Section 738 leads to the conclusion that it creates, or particularizes, a *duty* for the District Attorney and does not create a new jurisdiction in the Courts. The jurisdiction to be invoked is as old as the hills and inherent in the Court,—the power to make its judgments speak truth, to purge its records of fraud, and grant relief to persons injured thereby. The Courts have always had that power; but District Attorneys, it

would seem, would otherwise have no such duty, that duty resting upon the Attorney General of the United States. (*Throckmorton* v. *U. S.*, 98 U. S. 61, 70.) Always the United States could apply through its Attorney General for a new trial, for a rehearing on newly discovered evidence, or could have moved to expunge the judgment for want of jurisdiction; and like any other litigant, it might ask a court of equity for relief against an extrinsic fraud practiced upon it to procure a naturalization; and since *Tutun* v. *U. S.*, 270 U. S. 568, the road to appeal has always been open to the United States, as one of the parties to the judgment of naturalization.

True, this Court has said that the right of appeal from, and the right to file a bill to vacate a naturalization judgment, are cumulative remedies (*Tutun* v. *U. S.* 270 U. S. 568); but, it is respectfully suggested, those rights, by their very nature, always existed, independent of Section 738, and this Court has so recognized them; but this Court did not say that the remedy in equity for relief from fraud or illegality could also be used as a writ of error to reverse a merely erroneous judgment, not by inspection of the record, but by a retrial of the issues. Each remedy has its distinctive field, and serves its own distinctive purpose.

When *U. S.* v. *Ness*, 245 U. S. 319, was decided, it was assumed there was no right of appeal from a naturalization judgment (p. 336). Later this Court decided in *Tutun* v. *U. S.*, 270 U. S. 568, that a naturalization judgment "like other judgments of a court of record is accepted as complete evidence of its own validity unless set aside" (p. 577), and so has the stability furnished by the doctrine of *res adjudicata*.

An error remediable by appeal or writ of error is one that can be seen on inspection of the record,—whether that error renders the judgment void or voidable. Equity

will relieve from the exercise of rights under a void judgment or a judgment apparently valid but void for extrinsic fraud.

A judgment illegally procured is void because of the absence of some jurisdictional fact either patent on the face of the record, or latent in some jurisdictional fact, obviously existing, but which evidence will disclose did not in fact exist when the judgment was entered. If patent, the judgment is void upon the face of the record and the error may be reached by appeal, writ of error, motion to expunge, or by complaint in equity to cancel a void certificate of naturalization, on the equitable ground of cancellation. And likewise latent extrinsic fraud is remediable in equity.

That the judgment of naturalization is a binding adjudication between the United States and the naturalized person, with all the attributes of finality, is indicated by Congress' direction to District Attorneys to apply to one of the Courts having jurisdiction to naturalize, to vacate the judgment and cancel the Certificate it authorizes, on the ground of fraud or that the judgment order and Certificate of Naturalization were illegally procured (8 USCA Sec. 738).

Here all jurisdictional facts are admitted by the complaint to exist, and the only fraud charged is false testimony at the trial and a false oath of allegiance,—false testimony as to subjective matters respecting intent and mental attitudes,—intrinsic fraud.

When no bill of exceptions is taken to preserve the testimony of witnesses in a trial, their testimony becomes merged in the judgment. Everything necessary to the validity of the judgment is supposed to have been detailed in the evidence.

No one can tell from this record, but that all of the things said against petitioner as happening prior to his naturalization, were made known to the Judge hearing the naturalization proceeding, or was in the preliminary governmental examinations prepared for use and used on trial. There is no evidence in this record to indicate that any fact was withheld from the government or the Judge at the naturalization trial. All of the things said, and that could have been said, are presumed to have been said; proving them a second time, for some other Judge to pass upon, is not the theory upon which such naturalization proceedings rest, and was never in congressional contemplation.

Such a dramatic event as shifting one's nationality, with all its implications, calls for an irrevocable judgment, as well for allegiance as for protection against the renounced sovereign.

It is to be presumed that the Judge of the State Court heard and weighed each fact presented in this record as having occurred prior to April 13, 1937; and it is to be presumed that the Judge there held that there was nothing in those facts, everything considered, inconsistent with the allegations of the application for citizenship, and that every required intention was present, and that every necessary mental attitude existed. All such, once adjudicated, is unchangeably decided.

Intrinsic Fraud Is Not Remediable in Equity.

False testimony is known as intrinsic fraud and cannot be remedied by a complaint in equity. The remedy for intrinsic fraud is in the suit in which the false testimony was given. In *U. S.* v. *Throckmorton*, 98 U. S. 61, 65, this Court said concerning an effort to reach intrinsic fraud by a complaint in equity:

> "The trial is the opportunity for making the truth appear. If unfortunately he fails, being overcome by perjured testimony and if likewise he fails to show the injustice that has been done him on motion for new trial, and the judgment is affirmed on appeal, he is without remedy * * * and so the rule is that a final judgment cannot be annulled merely because it can be shown to have been based on perjured testimony; for if this could be done once, it could be done again and again, *ad infinitum*."

If it could be so done, petitioner might file a complaint to set aside the decree in this case because of the allegedly false testimony of the witness Merton, which petitioner strenuously insisted and still insists was perjured. (Proceedings in *Knauer* case, pages 948-976).

The Federal Courts of Appeal have applied the ruling in the *Throckmorton* case to denaturalization cases. See *U. S.* v. *Norsch*, 42 F. 417 (1890); *U. S.* v. *Gleeson*, 90 F. 778 (1898); see also *Steel* v. *Smelting Co.*, 106 U. S. 447, 453; *Vance* v. *Burbank*, 101 U. S. 514, 519; *Mofat* v. *U. S.*, 112 U. S. 24, 32; *U. S.* v. *Minor*, 114 U. S. 233, 244.

The law has set time limits upon review by writs of error and appeal binding upon the United States the same as any other litigant, at the running of which, all errors for which judgments are voidable only, are cured. The law has set no time limit upon the United States to file a complaint to set aside a judgment void for extrinsic fraud or illegality.

It is to be noted that Section 738 was enacted after this Court had held in the *Throckmorton* case that intrinsic fraud was irremediable in equity; and after the *Norsch* and *Gleeson* cases had applied the doctrine of the *Throckmorton* case to denaturalization judgments. And the provisions of Section 738 were re-enacted in 1940 after this Court had held in the *Tutun* case that a natur-

alization proceeding was a case and that its errors might be corrected on appeal. From which the presumption appertains that Congress adopted the laws with those constructions.

And so it appears obvious that Section 738 did not change equitable procedure nor the basis upon which must rest all complaints in equity to vacate or overthrow judgments for fraud.

Fraud to Be Relievable Must Be Extrinsic.

Fraud to void a naturalization judgment must be extrinsic and with reference to some demonstrable, objective fact, giving jurisdiction to hear, or some matter connected with the management of the law suit.

The basis of this suit is intrinsic fraud. The complaint originally charged that the naturalization certificate was procured "fraudulently *and* illegally" and on trial was amended to read "fraudulently *and therefore* illegally"; the charge being that the representations made in his petition and in his oath of allegiance were false.

Mistakes made in the trial of the issues pertaining to subjective matters are in the field of error, and are merged in judgment; the judgment is the act of the Court, not the parties, and is not subject either to collateral overthrow or direct attack upon an allegation in a complaint in equity that the testimony heard was false, or that the case was erroneously decided.

In the case of *United States* v. *Throckmorton*, 98 U. S. 61, this Court passed upon a Complaint filed by the United States to relieve from alleged fraud in the procurement of a decree where the complaint charged that

a land grant had been fraudulently antedated and that the defendant had supported the antedated grant with depositions of perjured witnesses, after discussing the basis of the relief there asked, and the adjudications pertaining to such question, said, (p. 68):

> " • • • the acts for which a court of equity will on account of fraud set aside or annul a judgment or decree, between the same parties, rendered by a Court of competent jurisdiction, have relation to frauds, extrinsic or collateral to the matter tried by the first court, and not to fraud in the matter on which the decree is rendered."

Fraud is said to be intrinsic where the fraudulent matters were in issue and could have been or were adjudicated; see *Hilton* v. *Guyot*, 159 U. S. 113, where it was held that the rule did not apply to judgments of foreign countries. Five judges so holding, and four being of belief that the rule should apply to all judgments); and where the Court had before it the same issue of fraud and the same essential facts. (*Toledo S. C.* v. *Comp. Scale Co.*, 261 U. S. 399).

The textbook says that the theory of the ruling is that relief from intrinsic fraud is denied because the issue was tried; and that relief from extrinsic fraud is allowed because there never was a trial (31 Am. Jr. 232).

The charge that the certificate was procured "fraudulently and therefore illegally" only means, legally speaking, that the charge is one of fraud. The type of fraud contemplated by the Statute has to do with some type of deception or imposition upon the court or counsel; an example of which is *Toledo S. C.* v. *Comp. Scale Co.*, 261 U. S. 399, where it appeared that one party gathered up and concealed all the evidence so as to deprive the opponent of a fair trial; or as in *Johanssen* v. *U. S.*, 225

U. S. 227, where Johanssen produced false witnesses as to the length of his residence which was only four years.

Such fraud is collateral to the issues,—never in them, or of them; is distinct from, and a legally different thing than, illegal procurement, and was, it is thought, so considered by Congress.

Nature of Illegal Procurement.

Illegal procurement, as distinguished from fraud, and as obviously visioned by Congress, is mistakenly or erroneously obtaining the naturalization judgment and certificate upon a record wherein there is wanting some one of the objective jurisdictional prerequisites, the presence of which is necessary to enable the Court to proceed to a trial of the subjective issues; as, for example, where there was no certificate of entry attached to the petition (*U. S.* v. *Ness*, 245 U. S. 950); where witnesses are not competent; where the required length of residence was not present, (*Johanssen* v. *U. S.*, 225 U. S. 227), or where some jurisdictional procedural requirement was not observed, as where the hearing was not held in open Court (*U. S.* v. *Ginsberg*, 243 U. S. 472). These examples are not fraudulent matters (except Johanssen who was also guilty of fraud); they arise from mistakes, errors and omissions.

Inasmuch as the charge here made has no reference to a judgment void for want of jurisdiction to hear the application, or for other jurisdictional defect, there was no illegal procurement, as all else pertains to trial and decision upon evidence pertaining to subjective matters,—errors in deciding which lie in the field of error. The amendment of the Complaint did not change the substance of the charge, which, being one of intrinsic fraud, inherently admits the legality of the proceeding.

A charge of intrinsic fraud does not challenge jurisdiction, it admits it. It raises a question of error only. It raises no issue for adjudication. It is a feigned issue. It does not present subject matter for adjudication.

The issues having been once adjudicated, this suit was therefore erroneously tried without subject matter.

II.

Where the necessary jurisdictional facts are in a naturalization record, a decision of the naturalization court upon subjective issues is res adjudicata, and the remedy for erroneous appraisal of the facts, or false swearing, is by application to the naturalization court for a reconsideration of the issues, and, if not allowed, appeal therefrom to correct errors. Equity is not the forum for such relief.

A.

The United States is in charge of all naturalization proceedings and in legal effect a party litigant; made so by actual participation under authority of the statute and rules made pursuant to the statute.

It cannot be seriously contended that the United States is not a party litigant to a naturalization proceeding, for the Congress authorized its appearance (Sec. 734) and made it an active participant in such proceedings; the naturalization service supplies forms, makes investigations, takes depositions, makes reports and files them in the cause. The Service checks every applicant.

The United States may have a review of the proceeding in the Circuit Court of Appeals, or in the State Court of Appeals, as may be, if it desires to question the judgment of the naturalization court.

The Government Guides the Alien to Citizenship.

From the day the applicant leaves the old country down to the moment of the final judgment of the naturalization, the United States Service watches over him. It is present at all of the preliminaries; it prepares the evidence, fills out the forms, examines the witnesses, searches the mind, the conscience of the applicant; educates him, attends the trial, hears the evidence, examines witnesses, objects, excepts. It either states there is no objection, or makes specific objection to the applicant. The Government is in fact the applicant's next friend, watching, counseling, advising, educating,—but if not satisfied, objecting, excepting, appealing.

In *U. S.* v. *Kusche*, 56 F. Supp. 201, 230-233, the learned District Judge, Pierson M. Hall, in passing upon a group of Bund denaturalization cases, after detailing the many administrative activities of the Department in connection with the naturalization of an alien, said this (p. 233):

> "From the time the alien institutes in the country of his origin, with the American Consul, his application for a visa quota number, until the final oath, he is not opposing any Government officer or agency, or proceeding without them. But the Government literally takes the alien by the hand and leads him through this maze of forms, questions, examinations and re-examinations, and oath and swearings, including his education in the principles of the Constitution. The Government in effect is the alien's guide and mentor, and for all practical purposes has control of the proceedings. The alien can abandon his desire to proceed, but he cannot do anything about it. At no time can the applicant move forward towards his naturalization without going to the Naturalization Service of the Government or using

the forms they supply to him, and in fact cannot go forward without the aid and assistance of the Government."

Judge Hall could have added other suggestive regulations. In 8 CFR 70.14 it is provided that where objections "by the Service to the granting of a petition for naturalization is overruled by the court, exception should be noted of record" and a "comprehensive report" made immediately in order to permit prompt determination of the question of review of the court's action through Appellate, cancellation or other proceedings". And in Section 70.22 (8 CFR) it is provided that in final hearings in open court where there has been preliminary examinations, "the examination shall be conducted by the naturalization examiner or officer in such manner that the rights of the United States will be conserved under Section 11 of the Act of June 29, 1906, (34 Stat. 599) • • • If material objection be overruled by the Court, an exception will be noted for possible action on review and leave obtained from the court to submit the objection in appropriate form for the record".

70.11 (8 CFR) provides that Naturalization officers are authorized to appear in naturalization cases and participate in examinations on behalf of the United States, call witnesses, produce evidence and be heard in opposition to applications, and have a stenographic report made of the proceedings. And 70.12 (8 CFR) provides that if it is impossible for the Service to be represented in person in Court that that fact shall be transmitted to the Judge of the Court signed by the District Director or Divisional Director and mailed in ample time in advance of the hearing; that the petitions due to be heard are to be listed on the appropriate form with number and name, and with all statements of fact below the number and name of the case; and also "show all facts that have been

developed that may be unfavorable in nature, and, if any, the grounds for objection, with pertinent comment and citation of authorities in support of the objections. In favorable cases it will be stated that no objection appears."

By 70.19 (8 CFR) the officer conducting the preliminary hearings is required to keep a docket record on the named form of his findings, favorable and unfavorable, with reasons for unfavorable findings which is to be made available to the Judge when desired.

So completely under the control of the Department is the naturalization proceeding considered to be, that examiners and officers are warned that they "have no right or authority to administer the oath of allegiance to the petitioner who must appear in person in open court at the final hearing before the Judge of the Court for that purpose". (8 CFR 70.19).

The United States Is an Active Party Litigant.

In view of these regulations it is seen that the United States considers itself an active party litigant in each case; and it is seen that it actually appears in the conduct of the trial, or that it files a report therein either consenting to the applicant's admission, or objection thereto with reasons and a brief. The rules so authorize and direct, and we may assume the persons in charge perform their duties without proof that they do so.

The United States being in fact a party litigant in each case either consenting to the applicant's admission or objecting, it stands before the Court the same as any litigant and is bound by the same rules of law and evidence.

Knauer's answer sets out that after he filed his petition for citizenship he was investigated by various governmental agencies as to his character and beliefs from

the date of his arrival in the United States to the date of the hearing on his application; that he produced two competent witnesses as to his character, qualifications and beliefs which were found to be above reproach and in full accord with the statements and declarations in his petition.

Whether the Government agency charged with such investigation consented, or objected to Knauer's admission to citizenship, is not shown. If the agency consented the Government should be bound by its action; and if the Government made no objection or defense, its remedy if it were not satisfied was to appeal. It should not be heard to challenge a judgment years later which it stood by and saw entered when the facts were known to it, or accessible to it,—facts that is, proper to be heard by the court upon the issues submitted by Congress to the Courts for adjudication.

No showing is made by the Government as to when it first learned of the facts it relied upon or why they were not sooner brought to the attention of the Court, and it must be assumed those facts were at all times known to the Government.

Here the doctrine of *res adjudicata* applies to all evidence introduced, or that could have been introduced, as to all subjective matters in issue pertaining to the period prior to April 13, 1937 and the judgment is final, there having been no appeal to test out the correctness of the adjudications, and existence of the objective facts being admitted.

Both Litigants Are Bound By the Adjudication.

If any one of the objective qualifications, such as declaration of intention, years of residence, competent witnesses, port of entry, hearing in open court, etc., etc., is

missing, an applicant has not become a citizen, the judgment being void and subject to collateral attack. No one is bound to respect such judgment. It is void for want of subject matter.

The subjective elements,—intention, attachment to Constitutional principles, mental attitudes and behavior, are specifically submitted by Congress to the Courts for adjudication. Proof of these matters requires evidence by witnesses, to the satisfaction of the Court. When such judicial investigation has been concluded, and the applicant ordered admitted, the proofs are merged in the judgment and the judgment becomes the objective fact that binds up all of the subjective matters together so that the citizenship is *de jure* and the finding of the existence of the subjective requirements congeals them into an objective fact along with the declaration of intention, the residence requirement, etc., etc.

When the objective jurisdictional facts admittedly exist, and the subjective issues are tried and the findings merged in the judgment with the jurisdictional facts, both parties are bound by the judgment. The applicant will not be heard to say he did not intend to renounce his allegiance to his native country nor that he took his oath with reservations. He is estopped, and being estopped, the United States is likewise bound. Both are bound or neither.

B.

Where there is jurisdiction to hear, there is power to decide and such decision is res adjudicata.

The Constitution gives no power to Congress to repudiate a naturalized citizen because of subsequent conduct, to deport him beyond the realm, expel him, or destroy his citizenship by any type of action. He stands, when

judicially admitted, upon the same ground as the native born, except as to eligibility to the presidency.

Nor has Congress ever drawn a line between the native born and the "naturalized" citizen so as to put them on a different footing.

And this Court repudiated that doctrine in the *Schneiderman* and *Baumgartner* cases where conduct after naturalization had been erroneously given the same relevancy and probative force as when he was an alien on probation.

To "establish uni" m rules of naturalization", pertains to the admission of persons to citizenship, not to denaturalization after admission. The latter power Congress does not have. But Courts do have power to set aside any of its own judgments when the jurisdictional elements are not present. That power is inherent in all courts and is a necessary power which it exercises to keep its judgments pure and truthful. That power is *recognized* by Congress,—not *granted* by Congress.

It, obviously, never was the theory of Congress to create a system of admitting aliens to citizenship by judicial order, and yet empower District Attorneys to undo, at their discretion, the very adjudications of the Courts so authorized; District Attorneys are only empowered to bring to the official attention of the Courts proceedings by which void certificates have been issued to unqualified applicants, or upon proceedings lacking in jurisdictional support or procured by fraudulent practices.

Where there is jurisdiction to hear the application the judgment is final.

Once a person with the jurisdictional qualifications is admitted to citizenship, he is as a drop of water in the ocean, or a part of the blue in the sky and loses his alien

character. He wears no stigmatizing letter, no identifying apparel, no leading strings, nor straight jacket, as Mr. Justice Murphy terms it. He belongs, and is free to say and do in the American way. He may traduce and denounce or praise and glorify; he may point with pride and view with alarm; he may organize, lead or follow as is the result of liberty of speech and action. He is a citizen.

The Congress did not make it the specific duty of District Attorneys to appear in the citizenship proceedings and try the stereotyped issues framed by Congressional forms, but Congress delegated to the Courts, and to them judicially, the matter of inquiry into, and adjudication of, the issues made by the application and to decide those issues by examination of the applicant, and his necessary witnesses. The naturalization service is a part of the personnel of the Naturalization Court and the court relies upon its aid in conducting naturalization proceedings which are, as is known, held for classes or groups. All proofs made by the Service officer, by the applicant, or by the Court's questions merge in the order establishing citizenship in the applicant and the facts become a thing decided, adjudicated, and *res adjudicata* between the United States and the applicant.

To overturn a naturalization judgment its foundation must be attacked, not its superstructure.

To overcome such adjudication, the requisite evidence must be something that concerns jurisdiction to hear and determine the application, absence of subject matter, something missing or wrong that would overturn the judgment; something of such nature as to prove the judgment to be without foundation.

Error in appraising the evidence on the subjective issues goes the way of all error, through courts of appeal.

The Government did not here plead that it had newly discovered evidence that would prove the falsity of the oaths of the applicant. The allegation goes only to attack the mental attitude and intentions, or lack of intentions, of petitioner at the time he applied for and at the time he was admitted to citizenship, which was the very issue delegated by Congress to the Naturalization Court.

Every objective jurisdictional fact necessary to a hearing upon the application for citizenship is admitted by the Government. The complaint attacks only those subjective requirements which the Congress delegated to the Courts,—the power of establishing citizenship by judicial findings, that are to be made upon oral evidence. And the Government here admits that those judicial findings were made. The judgment admittedly has the correct background and it is fair upon its face.

There is no substantial, first hand, affirmative, direct, evidence in the record tending to prove in any degree that petitioner, when he swore to his application, or when he was examined by the Court, or when he took his oath of allegiance, had any mental reservations whatever, or that he had no intention to observe his oath; or that he had falsified his several oaths. Whatever evidence the Government produced raises only a reflection, deduction, or suspicion.

The Government did not show that applicant swore falsely. It only offered evidence to show that defendant did what native-born citizens might legally do.

Obviously a naturalized citizen cannot be denaturalized, deported, expelled, for the exercise of privileges permissible to the native born. Equal protection forbids.

Where the objective type of jurisdictional facts are present and, after hearing evidence on the subjective issues, an applicant is admitted to citizenship in all due legal form by judicial action, he is then a *bona fide* citizen. That is this case.

Subsequent conduct cannot void a naturalization judgment.

The judgment here is not void in any sense. Nor is it voidable except by appeal. Being then a citizen, albeit, judicially born, the new citizen is then entitled to equal protection of the laws and may not be denaturalized for any cause or reason not going to the jurisdiction of the Court to hear his petition. Subsequent conduct of any type would not render the judgment void.

Being made a citizen by a judicial decree, standing unreversed of record, and performed by the applicant by acceptance and assumption of the status, duties and oblizations of citizenship, the decree has been performed and the whole matter is in the past perfect tense. All acts thereafter done, all opinions thereafter expressed, are those of a citizen under protection of the Constitution and subject to such penalties as the law provides.

The newly-made citizen is bound by his oath of allegiance. Being bound by the new tie the United States likewise is bound. Both are bound or neither.

That such adjudications are *res adjudicata* between the parties, this Court has in effect held or has clearly so recognized.

It is thought that the point was decided in *Ness* v. *U. S.*, 245 U. S. 319, which was a petition in the District Court for the Northern District of Iowa to cancel a certificate

of naturalization of a State Court for failure of *Ness* to file with his petition a certificate of the Department, "stating the date, place and manner" of arrival as provided in the Act. The United States had entered its appearance in the naturalization proceeding and moved to dismiss on the ground that such certificate was not filed. The motion was considered and denied. Petitioner and his witnesses were heard and the naturalization granted.

At that time, 1917, it was considered that appeal did not lie from the order of naturalization (p. 326).

Within six months the Government filed complaint to cancel the certificate of naturalization of the State Court.

Ness showed that when he arrived from Norway he was ignorant of the law, and unobserved, strayed away and entered the United States without being physically examined, paying the head tax, or having his entry registered. After being admitted to citizenship he offered to pay the tax and take the physical but was refused. All other qualifications he had.

It was claimed by Ness that the missing certificate was a matter of form but it was held that it was one of substance which the Court had no power to waive, hence jurisdictional.

It was claimed by Ness that in any event the judgment was *res adjudicata* because the Government had appeared and contested. The Court, speaking through Mr. Justice Brandeis, said:

> "Opposition to the granting of a petition for naturalization may prevail because of objections to the competency or weight of evidence, or credibility of witnesses or mere irregularities in procedure. A decision on such minor questions, at least of a State Court of Naturalization, is, though clearly erroneous, conclusive even as against the United States if it en-

> tered an appearance under Section 11. For Congress did not see fit to provide for a direct review by appeal or writ of error" (pp. 325-326).

This Court reversed the decree and held that the naturalization certificate was "illegally procured", which it obviously was, for such certificate is required by law to be filed with the application and is a jurisdictional condition precedent, and the certificate issued pursuant to a void judgment.

Since that decision, this Court considered *Tutun* v. *U. S.*, 270 U. S. 568, and held that an appeal may be taken from naturalization judgments and the objections that might be asserted because of lack of a specific appearance by the Government in the case disappear, if any ever were tenable. The doctrine announced in the *Ness* case should apply to all issues decided upon oral evidence.

The *Ness* case lends support to the contention here made that the decision of a naturalization court is *res adjudicata* on all subjective issues tried by *pro* and *con* testimony so as to reduce the unknown quantity to a fact, —which fact, so ascertained, is then a jurisdictional capstone to the naturalization structure. And the fashioning of that capstone is one submitted by Congress to the Naturalization Court.

The same question was before this Court in *Schneiderman* v. *U. S.*, 320 U. S. 118, where it was contended that *Schneiderman* had falsely concealed his membership in the League and the party (Communist) from the naturalization court and that his oath of allegiance was false (p. 129). The trial court had held that the oath was false and the certificate illegally and fraudulently procured. The opinion of this Court was based on the question of fact, reversing on the ground that the charge was not proven by clear, convincing and unequivocal evidence.

But Mr. Justice Douglas, concurring, took the position that when the statutory requirements of a naturalization judgment are in the record, fair upon its face, its sufficiency to support the judgment cannot be questioned (pp. 164-165), which means, as we interpret, that, given jurisdiction, all those matters, subjective in nature, submitted by Congress to the decision of the Naturalization Court upon issues, is *res adjudicata*.

And Mr. Justice Rutledge also concurring was of opinion that Congress had no power to submit the naturalization of citizens to the Courts for judicial determination with a string attached to pull him back to the status of an alien at will; *i. e.*, that where there is jurisdiction to hear evidence the judgment of the Naturalization Court upon the issuable facts, becomes final and may not be reviewed collaterally or the facts tried out *de novo*, which means that the naturalization judgment is *res adjudicata* on those matters referred by Congress to its designated naturalization courts.

And it is respectfully suggested that where the jurisdictional facts are in the record the judgment of naturalization cannot be attacked either collaterally or directly. The remedy is appeal by the party aggrieved.

The defendant is bound by the judgment, if against him, on that doctrine, and so must the United States be.

All of which is consistent with the right of the United States to collaterally attack a judgment of naturalization of a State Court on the ground that some jurisdictional fact necessary to its validity is missing, rendering it void. A void judgment may be attacked anywhere, any time.

A judgment is not void which has been entered upon an issue, if the Court has jurisdiction to decide the issue. Such a judgment is *res adjudicata* between the parties and not subject to be again litigated.

A litigated fact, not involving jurisdiction to hear, becomes a fixed fact, indisputable.

III.

The complaint being one for intrinsic fraud does not state a cause of action in equity, and the decree is without jurisdiction of subject matter.

The complaint in this case does not state a cause of action in equity to vacate the judgment of a court of coordinate jurisdiction or cancel or annul its certificates; where the scope and purpose of the complaint is to overturn the judgment on the ground of intrinsic fraud no statement of facts however detailed will aid it. Here only ultimate facts are pleaded, but the complaint plainly shows that it seeks relief from intrinsic fraud, and nothing else.

The charge in the complaint that the statements and oath of petitioner were false and fraudulent as to subjective matters submitted to the Courts by Congress for decision, upon evidence to be adduced, does not overcome the force and effect of the admittedly valid judgment of the Wisconsin State Court upon that very evidence, which stands as a thing decided between the parties. The force of the adjudication of the Wisconsin State Court, which admittedly had jurisdiction to hear and decide, is stronger than the abstract charge of fraud in reference to the adjudication of subjective issues specifically entrusted to it by the Congress.

The bare allegation of intrinsic fraud, stated in the form of a conclusion, has made this record of 2500 pages of testimony, and hundreds of exhibits, possible.

Judgments of naturalization are not vacated as matter of course, and Congress could have no intention of mak-

ing judgments of naturalization vulnerable to abstract charges of fraud.

Citizenship is not so cheap.

IV.

If there is jurisdiction to administer the oath of allegiance the status of the citizen is irrevocably created.

The statute provides that the applicant shall, before being admitted to citizenship, take the oath of allegiance in open court. All of the declarations appearing in the oath have necessarily been adjudicated. The ideas first appear in the Declaration of Intention wherein it is stated that the declarant intends to become a citizen of the United States and will renounce all fidelity to the native land (8 U. S. C. A., Sec. 731). Again in the application for naturalization it is stated that it is the applicant's intention to become in good faith a citizen of the United States and that it is his intention to renounce all fidelity to the sovereignty of which he is subject (8 U. S. C. A., Sec. 732). And then in the oath taken in open court, before he is admitted by the decree of the court, the applicant makes oath that he does then and there renounce and abjure all allegiance and fidelity to his nature land or sovereign and that he will support and defend the Constitution and laws and bear true faith and allegiance to them and does so without mental reservation (8 U. S. C. A., Sec. 735).

The oath of allegiance follows upon the adjudication by the court that all necessary facts exist which enable the applicant to be and become a citizen. Taking the oath of allegiance is the step by which the applicant renounces his native country and attaches himself to the United States, and upon which the United States accepts him as a member of its citizenry.

Where there is jurisdiction to adjudicate a petitioner to be a citizen, and the adjudication is made, only the oath of allegiance is needed to complete the process. It is the judgment that qualifies the applicant to become a citizen; it is the oath that binds the applicant to fealty and makes him a citizen. An oath of allegiance would not be necessary except that Congress exacts it as an objective action that is readily provable.

The oath of allegiance cannot be detached from its mooring and considered as a thing apart. It is an essential part of the judicial proceeding and is entered into in open court as a part of the hearing and is allowed only after the court has adjudicated the very facts the oath contains. The facts contained in the oath are *res adjudicata* in the proceeding.

The minds meet when the evidence has been heard, the court adjudicates that the jurisdictional facts are present, and the applicant swears allegiance to his new sovereign. From that point on, neither may deny the right of the other.

It is not believed that the question of fraud in taking an oath of allegiance can be raised as is asserted here by the Solicitor General. It is not denied that an oath was taken as required by statute. That stands admitted. When the oath is taken the applicant is bound to the sovereign and may not be heard to say that he did not mean it, or that he had mental reservations; for immediately upon the taking of the oath the Government may exact every obedience from the new citizen as if native born.

And conversely the new citizen may ask every protection guaranteed under the Constitution and laws.

The oath taken is obviously binding upon the applicant. By it he renounces his allegiance to his native land and by it he owes fealty and allegiance to the United

States. He cannot be heard thereafter to contradict it, and grave doubt exists if the Government, taking and accepting the oath, should be heard to challenge it.

If an oath is taken in court to testify to the truth, the witness is qualified to testify. If he commits perjury he is punished for his acts as a witness, but he is still a witness.

An oath of office qualifies the office holder. He then owes to the public the duties of his office and cannot be heard to deny his oath. Nor can the Government he serves question his oath.

When parties are married they may not later claim mental reservations and deny the obligations of the marriage.

It is the oath of allegiance of the inductee that ends his civilian status and dates the commencement of his soldier status. (*In re Grimsley*, 137 U. S. 140).

It is the oath of allegiance that qualifies the applicant to be a citizen, by it he becomes a citizen. The oath seals the mutual undertakings of the parties and the applicant cannot then be heard to say to the contrary, nor can the United States raise the question of mental reservations in the taking of the oath. There can be no mental reservations in an oath. It is taken without mental reservations, and none can be asserted.

If there were no oath taken the tendered citizenship would not for that reason operate to become effective. But where the oath was admittedly taken it is conclusive upon both parties.

If there is an oath taken in due legal form, as required by the Government's forms, it cannot be adjudicated to be void upon any ground of mental reservation.

Perjury is based upon the validity of the oath, not upon any mental reservations in the mind of one who takes the oath.

The Oath Creates the Status of Citizenship.

An oath of allegiance is a pledge of fealty. It cannot be recalled by the maker and when accepted and acted upon by the Government it is binding on both parties and the new status cannot be overturned or set aside upon any thought that the oath is not binding. The oath is binding.

Suppose some treasonable conduct were indulged in after the oath were taken, can it be said that the Government shall have the option to treat the oath as fraudulent and cancel the certificate of naturalization, or to prosecute for treason and punish for that crime?

Obviously when the Government may punish the naturalized citizen for some crime because he is a citizen, then the oath must make him a citizen when the oath is taken. The oath here creates the *status* of citizenship.

The Government should not be heard to raise the question that an oath of allegiance was made with reservation, years after it received it as binding evidence of naturalization. If it is permitted to do so, no naturalized citizen may say his citizenship is safe for prior adjudications will not protect him.

In this case the Solicitor General admits that the naturalization proceeding in the State Court had every jurisdictional element; that it took the oath and gave the certificate of naturalization; and the Government is here estopped to challenge that record except for extrinsic fraud or lack of some jurisdictional element and no such defect is claimed to exist.

V.

The trial in the District Court and the decision in the Circuit Court of Appeals violate the positive rule announced in the Schneiderman case and confirmed in the Baumgartner case,—that to support a decree cancelling a certificate of naturalization conduct prior to the naturalization judgment must be clear, unequivocal and convincing; and that conduct as a naturalized citizen subsequent to the naturalization judgment is of little relevancy.

The clouds had been gathering for a year or two prior to the decision of the *Schneiderman* case, and there had developed a policy and movement in the Government to group together for trial persons charged with having obtained their naturalization certificates by fraud and illegality. Such trials were developing in all or most of the Circuits. It was a war time program, obviously intended to sift out any alien enemy who might be operating under cloak of a naturalization certificate, illegally or fraudulently obtained. It was a tremendous threat and well calculated to still the voice of sympathy for the homeland and quiet any opposition to the war program. It was in light of that condition that the *Schneiderman* case was argued, considered, re-argued, re-considered, and decided; and the rule announced was obviously made to aid trial courts and Appellate tribunals in disposing of the many cases working their way through the dockets, as the opinion indicates.

In the *Schneiderman* case, decided June 21, 1943, this Court changed the civil evidence rule in denaturalization cases from probability to clear, convincing and unequivocal evidence that leaves no doubt; and, holding that such measure applies to expressions and conduct in the period

prior to the judgment of naturalization, upon which the right to a certificate of naturalization must depend; and holding that conduct and expressions after being made a naturalized citizen were of little relevancy in determining the mental attitudes and behavior prior to the admission to citizenship.

When this Court filed its opinion in *Schneiderman v. U. S.*, 320 U. S. 118, its far reaching effect became immediately known. It had been publicly known that it had been argued and re-argued, and when decided the public press carried its import and the opinion became available to judges and attorneys, as a chart and guide.

The group of Milwaukee cases had been prepared while the *Schneiderman* case was pending in this Court and under consideration; this case was filed on February 3, 1943, on May 12, 1943, motion was made to consolidate the several pending cases and on June 16, 1943, the order of consolidation was entered.

On June 21, 1943, the *Schneiderman* case was decided. On June 30, 1943, the Circuit Court of Appeals for the Seventh Circuit filed its opinion in *U. S.* v. *Krause*, 136 F. 2d 935, in which it considered the effect of the *Schneiderman* case on the Bund cases, and instead of following it, held, in effect, that the *Schneiderman* case was an isolated case and was not intended to affect the theory on which denaturalization cases had been tried up to that date, *i. e.*, by considering the evidence of the whole conduct of the applicant before and after naturalization and down to the date of trial as of equal relevancy.

On September 10, 1943, a pretrial conference was held in the Bund cases and a plan of procedure was adopted. The statements of the trial judge made on that date are not in the record; but, on the opening of the trial of the case on September 21, 1943, for the benefit of some

who were not present at the pretrial conference, the trial judge announced his position with reference to the relevancy of the statements and conduct of the defendants.

The trial judge, I feel it my duty to say, purposely did not follow the rulings of this Court in the *Schneiderman* case. His refusal or failure to do so was on the ground that the Circuit Court of Appeals of the Seventh Circuit had held that this Court had not overruled the long line of cases in which citizens had been denaturalized on proof of acts and expressions years and years after naturalization; and his hesitancy to follow the ruling of this Court was that he felt "bound to follow" the interpretations put by the Seventh Circuit Court of Appeals upon the rulings of this Court in the *Schneiderman* case, regardless of his personal interpretations,—for he remarked to all counsel and litigants in advance of trial how he would rule. At the pretrial conference he stated his position and at the opening of the mass trial he reiterated it, remarking:

> "I should repeat here what I said at the pretrial conference, that it will be my *endeavor* in this case to apply the rules as laid down by the Supreme Court *and as interpreted by our Circuit Court of Appeals of the Seventh Circuit.* It may well be that their interpretation *does not entirely coincide with some other Circuit Courts of Appeal, but I feel bound to follow as nearly as I can their opinion in this matter, their ideas, their interpretation.*" (Mass trial Record p. 18).

That was the viewpoint of the trial Judge when he started and which he consistently maintained throughout the trial; and when the *Baumgartner* case was here decided, and he had seen the opinion before he filed his findings, he added a comment to his findings, that he had seen the *Baumgartner* opinion but still adhered to his

viewpoint that the subsequent conduct of petitioner proved petitioner guilty of fraud beyond all doubt and refused to rule that the subsequent conduct of petitioner was not relevant or controlling (Tr. 43).

It is of marked significance that along with his comment on the *Baumgartner* case the trial Judge filed an opinion in support of his findings and conclusions in which *he did not mention the Schneiderman case; he did not try to follow it, he ignored its rule, teaching, and logic.* On the contrary his opinion cites the line of extreme cases where citizens had been denaturalized on subsequent conduct, and the doctrine of all of which was overruled by the *Schneiderman* and *Baumgartner* cases, and some of which were later reversed in their Circuit Courts of Appeals.

In his opinion the trial judge relied upon the case of *U. S.* v. *Krause*, 136 Fed. 2d 935, (Seventh Circuit) in which that Court said that it did not believe that this Court intended to overrule the long line of cases in which subsequent conduct and expressions had been relied upon as competent proof; there was no prior conduct shown in that case; so it would appear that the Seventh Circuit Court of Appeals was appraising the rule announced in the *Schneiderman* case as isolated and as applying to its own peculiar facts for it says (p. 939):

> "We are convinced that in the case at bar (*Krause* case, 136 F. 2d 935, 939) the Government *did sustain* the burden of proving that appellant's *conduct and expression in later years* were opposed to the principles of the Constitution. *Applying the long line of cases* (none cited) *the* (Supreme) *Court does not overrule in the Schneiderman case*, we are further convinced that *such conduct and expression may be relied upon to* show that the oath of allegiance was taken with su[illegible] mental reservations as to render it wholly nugatory, and that being the case, that the

certificate of citizenship issued in reliance thereon was *illegally procured.*" (Italics for emphasis).

From that statement it is seen that there the affirmance was based on "conduct and expression in later years".

That is the ruling of the Seventh Circuit Court of Appeals made in face of the expression of this Court in the *Schneiderman* case (p. 147):

> "Since the immediate problem is the determination with certainty of petitioner's beliefs from 1922 to 1927, events and writings since that time have little relevance, and both parties have attempted to confine themselves within the limits of that critical period."

And the trial court, in the case at bar following the ruling in the *Krause* case, ignored the rule of the *Schneiderman* case and adhered to his decision in face of the positive statement in the *Baumgartner* case appearing on the Concurring Opinion of the Justices who wrote the opinion in the *Schneiderman* case (p. 678):

> "The decision in the *Schneiderman* case was not merely a decision of an isolated case. It was a formulation by a majority of the court of a rule of law governing all naturalization proceedings."

And that, with certainty, meant this case which he was then deciding.

Your petitioner respectfully suggests that the Seventh Circuit Court of Appeals appears by its opinions not to have grasped the basic significance of the increase in the degree of proof of prior conduct, and the depreciation of the relevancy and value of subsequent conduct and expression, wrought by the decision in the *Schneiderman* case, and as confirmed in the *Baumgartner* case, and that the Seventh Circuit is out of step with the judicial trend.

Other Circuit Courts of Appeals and District Courts are following those rulings.

The Fifth Circuit Court of Appeals recognized the change in reversing the trial Court in *U. S.* v. *Meyers*, 141 F. 2d 835, 826, 832. And the Judges in the Ninth Circuit also follow on the same theory, in *Bergman* v. *U. S.*, 144 F. 2d 34; also *U. S.* v. *Kusche*, 56 F. Supp. 201, 238-239. The Second Circuit follows, *U. S.* v. *Rossler*, 144 F. 2d 576; as also the Fourth Circuit, *Orth* v. *U. S.*, 142 F. 2d 898.

The Cases Relied on By the Trial Court.

The following are thumbnail sketches of the cases the trial Judge relied upon in preference to following the rule in the *Schneiderman* and *Baumgartner* cases.

U. S. v. *Krause*, 136 F. 2d 935, where a certificate was cancelled for subsequent conduct, which that Court spoke of as "illegally procured".

U. S. v. *Chuckardt*, 49 F. Supp. 567, where a certificate was cancelled in reliance upon *U. S.* v. *Baumgartner*, 138 F. 2d 29, 47 F. Supp. 622 subsequently reversed; and *U. S.* v. *Bergman*, 47 F. Supp. 675, which was subsequently reversed in 144 F. 2d 34, in reliance upon the *Schneiderman* case.

Schurmann v. *U. S.*, 264 Fed. 917, where Schurmann's Certificate issued in 1906 was cancelled for statements made in 1917.

U. S. v. *DeTolna*, 27 F. 2d 984, where his certificate was cancelled on his *admissions* that his witnesses were not qualified; which case was *properly decided* because the certificate was *illegally procured*.

U. S. v. *Kuhn* and 19 others, 49 F. Supp. 407, decided before the *Schneiderman* case where preponderance was

the rule and reliance was placed on the subsequently reversed *Baumgartner* case. The case of those of the defendants who appealed were reversed, 144 F. 2d 576 in reliance upon the *Schneiderman* and *Baumgartner* cases.

Turley v. *U. S.*, 31 F. 2d 696, decided before the *Schneiderman* decision and where the conduct of the defendant was held relevant down to the date of the trial.

U. S. v. *Orth*, 51 F. Supp. 682, which was subsequently reversed, 142 F. 2d 969.

U. S. v. *Holtz*, 54 F. Supp. 63, where the trial Court applied the doctrine of "relation back" and which case has clearly ignored the rulings in the *Schneiderman* and *Baumgartner* cases.

The trial Court, it is obvious, made no effort to decide this case upon the evidence of actions and statements of petitioner prior to his admission as a citizen, or even to evaluate them separately.

The record is top heavy with evidence as to what was said and done after April 13, 1937. There is nothing in this record transpiring prior to April 13, 1937, that can be said to be inconsistent with petitioner's application for citizenship or with his oath of allegiance, or tending to show that any fraud was practiced upon the government or court, or that petitioner in anywise perjured himself or misrepresented any fact; and none that his witnesses were in anywise incompetent or untruthful.

In fact there was no attack made upon the regularity and conclusiveness of the record of the Wisconsin State Court, nor is there such thought in the form of, or charges in, the complaint.

The sayings and doings of petitioner after April 13, 1937, are practically of no probative effect. Petitioner was then a citizen; and, if what he did as a naturalized

citizen was permissible to a native born citizen,—and there is no contention that it was not, then the fact that he exercised the prerogative of the native born, should not be heard as evidence that fraud and perjury were theretofore committed at the time he was naturalized.

Proof of things legally permissible to a native born citizen is no evidence of criminality if done by a naturalized citizen.

In the *Schneiderman* case this Court said that actions and expressions after an order of naturalization are of little relevance and that the five-year period prior to admission was the critical period of inquiry (p. 147).

In the *Baumgartner* case it is said in the concurring opinion that the decision in the *Schneiderman* case "was not merely a decision of an isolated case. It was a formulation by a majority of the Court of a rule of law governing all denaturalization proceedings" (p. 678).

The Court's opinion in the *Baumgartner* case points out that what is done after naturalization is not done by an alien *but by a citizen* with all the rights of the native born. The opinion in the *Baumgartner* case says:

> "New relations and new interests flow, once citizenship has been granted. All that should not be undone unless the proof is compelling that that which was granted was obtained in defiance of Congressional authority" (p. 675).

That means, of course, that what transpired before the date of the judgment of naturalization is the real inquiry; for if those facts would not bar the right to citizenship, then the judgment of naturalization was right and all subsequent conduct would be that of a citizen and without any relevance or significance.

The concurring opinion in the *Baumgartner* case points out that a newly naturalized citizen "does not lose the

precious right of citizenship because he subsequently dares to criticize his adopted Government in vituperative or defamatory terms" (p. 629), which means that conduct subsequent to naturalization is of no value on the issue in question.

Neither the trial Court nor the Circuit Court of Appeals appraised the facts according to the periods before and after naturalization, nor gave them their relative significance and weight; the viewpoint of each court is out of harmony with the decisions of this Court in the *Schneiderman* and *Baumgartnet* cases, and in conflict with the rulings and decisions in other Circuits, and should be reversed accordingly.

VI.

Documents showing the mental attitude of Knauer toward our Constitution and laws are set out in the Appendix hereto.

One of the difficulties in this case is the fact that Knauer tried his own case and although possessed of much intelligence and native ability, his defense suffers because it was not shaped and presented by a trained legal mind. The Court said:

> The Court: I recognize the difficulty of one not being a trained lawyer presenting the evidence in proper form and I am going to exercise rather wide latitude in permitting this defendant to try to present his viewpoint in his own way as best he can (Knauer Record 870).

However, Knauer did stamp upon the record that his objectives and purposes were all directed toward saving the group of citizens of German origin from defamation and smear propaganda.

A large number of letters, telegrams, articles, clippings, etc., were put in evidence by Knauer which reflect his mental attitude and his activities. The trail of ink which Knauer left behind him graphically speaks his viewpoint and attitude toward the Constitution and laws and demonstrates his oath of allegiance was true.

When it came the turn of Knauer to testify, the trial judge saw vividly the difficulty ahead. Addressing Mr. Knauer, he spoke:

> The Court: (Addressing Mr. Knauer) I presume you want to take the stand yourself to answer?
>
> Mr. Knauer: Yes, I would like to present some evidence.
>
> The Court: Very well, you can come over here and be sworn as a witness, and then we will see how we can get along without questions and answers. Just take the stand.
>
> Mr. Knauer: Now, at first I would like to point out that actual persecution of German Americans took place, and I would like also to emphasize what steps were taken either by myself or by the German American Citizens Alliance.

Knauer introduced in evidence a series of documents, a selected few of which are shown in an Appendix hereto. After the introduction of the documents Knauer proceeded to testify as to his mental attitude and intentions at the time he was admitted to citizenship. Under the influence of the recital of his sufferings, his philosophy, beliefs and actions, he passed from witness into advocate and finished in an oration in his defense. Inasmuch as it all goes as a direct answer to the charge in the complaint that he had falsified his oath of allegiance and the charge that he was not attached to the principles of the Constitution, it is printed in full in the Appendix (Knauer Record 915-924).

VII.

The findings of the trial Court and the judgment of the Circuit Court of Appeals reflect the influence of war hysteria.

All evidence introduced by the Government in support of its issues is circumstantial. None of it tends to show that Knauer was not attached to the Constitution while much of it does reflect an admiration of and attachment to its concepts. The activities of Knauer center around the German American Citizens Alliance of which he became an officer. It was just in its infancy when Knauer joined it a few weeks before he received his certificate of naturalization. The Alliance was chartered under Wisconsin laws "to unite into a union and federation all societies in Wisconsin whose members are of German origin: to maintain and support the Constitution of the United States in its integrity; to preserve all rights unabridged which the Constitution of the United States guarantees to its citizens and people of this nation."

It should be noted that the form of the organization of the Alliance is democratic. It is a citizens alliance. It has its officers, president, secretary, etc., and it acts by resolution and order. Its minutes were before the trial court. It is composed of societies, with a few individual members. It does not have the form of organization like the Bund,—that of a membership of individuals with the leader principle.

Public officials of Milwaukee had refused to give permission for the German American Citizens Alliance to the use of a public hall on the ground that it was claimed to be associated, with or part of, the Bund. The Circuit Court of Milwaukee County granted mandamus and the Court held there was no connection between the two organizations.

The period of time between Knauer's declaration of intention, on December 4, 1929, and the granting of citizenship to him on April 13, 1937, was a great period of recovery in Germany and the fame of the German leader who personified the movement that built it, went round the world. It was an era of hero worship. The old leaders were gone. Each of the nations that had been at war had their new, strong men and it was a day when any foreign-born citizen or applicant for citizenship could look to any homeland in admiration of his race. It is no wonder that Knauer should look and admire,—and admire to the same extravagant extent the native born was then doing of its native son. That part of it is but human. It would be less than human not to do so. That this controlling trait of human nature is a matter of consideration in these cases is expressed by Mr. Justice Frankfurter in the *Baumgartner opinion* (322 U. S. 665, 674), in this language:

> "For such is the contradictoriness of the human mind that the expression of views which may collide with cherished American ideals does not necessarily prove want of devotion to the nation. * * * Forswearing past political allegiance without reservation, and full assumption of American citizenship are not at all inconsistent with cultural feelings imbedded in childhood and youth."

And the thought expressed in the quotation from Gaetano Salvernini, now perpetuated in our judicial literature on page 674 of that opinion, will bear repeating again and again:

> "Your pledges are only judicial and poljtical. You are asked to sever your connections with the government of your former country, not with the people and the civilization of your former country. And you are asked to give allegiance to the constitution of your adopted country, that is, to an ideal of life."

In this case Knauer is charged with perjury in his application and in his oath of fealty and the proof by which that serious charge is supposed to be susbtantiated is that Knauer displayed some pride in his homeland and attachment to his people,—maybe exaggerated, maybe inordinately so. But, as said, the oath of allegiance to the United States as a nation and its Constitution is a political tie which does not mean that the applicant effaces his past, for he cannot.

It would be hard to find any basis or justification for the filing of this suit were it not for the state of war at the time it was brought and the psychology that envelops us all when war strikes, emotions deepen, and hatreds of all types accentuate. And there is no basis for the decree of cancellation here, if the war thought is written out of it.

Judicial history shows, as is revealed by the multiplication of the decisions in Circuits, that the Government developed a policy of filing complaints to cancel the certificates of naturalized Germans who were showing activity in German American affairs in communities where that racial background was dominant. The suits answered certain strategic purposes, and threw the burden of proving loyalty on the defendants, at least giving a dangerous suit to defend. The end sought may have justified the means. Theoretically no, but in practice it changed the burden of proof.

In Milwaukee there is a large population of German ancestry. The American Almanac of 1946 shows (page 483) that in 1940 there were 88,808 foreign-born Germans in Wisconsin. Of the State's 3,137,587 population, Milwaukee County has 766,885 (p. 481). There were a number of existing German American Societies in the State and the German American Citizens Alliance was formed out

of those existing organizations. It was no fly-by-night organization and the deduction by the trial judge in his finding No. 37 that the German American Citizens Alliance was a "front organization for the Bund" is a pure assumption.

The outstanding characteristic of the Government's proof is that it proved nothing of consequence prior to the date of Knauer's naturalization, except an interest in the affairs of the German-born citizen. There was no war. Everybody was hating war and planning to keep out of it if it should threaten. But the entire case is built upon the thought that all that was being done by Knauer was a part of the war effort of Germany which did not break for us until nearly five years later.

There is assumption in this case that everything petitioner did was wrong and a part of Germany's war effort.

Almost the entire opinion of the Circuit Court of Appeals is taken up with a vigorous denunciation of the Bund, its purposes and its program; and the whole argument of the findings of the trial judge is taken up with the same thought.

Strike out what is said on that topic and there is no basis to either the findings of the trial judge or the opinion of the Circuit Court of Appeals. It is based on war when there was no war at the time in question.

The District Attorney could not prove, and did not prove, that petitioner was a Bund member. He called defendant as his witness for cross-examination and had him on the stand a day and a half (Knauer's record pages 156-384) in an effort to prove it and finally put the direct question to defendant whether he were a member of the Bund and the answer was, "Never".

Mr. Becker: Q. Were you a member of the Bund?

A. Never.

Q. Did you ever sign any petition or written document of any kind for membership in the Bund?

A. Never (Knauer's case, testimony page 365).

The trial judge had already held that membership in the Bund was not in itself sufficient to prove fraud which would warrant a judgment of cancellation of a naturalization decree (Conclusion to Mass Trial Evidence, Tr. 27).

It was also found that one of the purposes of the Bund was to keep America out of the war (Finding 15, Tr. 24) The war started September 3, 1939. Petitioner was admitted to citizenship April 13, 1937, two and a half years before war was declared.

Conclusion.

It is, therefore, respectfully suggested that the Decree of the District Court and the judgment of the Circuit Court of Appeals affirming it have operated to deprive petitioner of equal protection of the laws and the basic rights of naturalized citizens to the guaranteed freedoms upon faith of which they seek naturalization; and for the exercise of which petitioner here has been in effect expelled.

Wherefore, it is respectfully suggested that in the interests of justice, the judgments of the District Court and of the Circuit Court of Appeals be reversed.

All of which is respectfully submitted.

Ode L. Rankin,
Attorney for Petitioner.

APPENDIX.

This Appendix contains copies of five communications received in evidence for defendant for the purpose of showing his attitude and his activities as an officer of the German American Citizens' Alliance; also

The testimony of defendant on the matter of his beliefs, philosophy, and attitude toward the Constitution; and his speech in his defense.

I.

Testimony of Defendant As to His Mental Attitude Toward America and Its Constitution and Speech in His Defense.

914 Mr. Knauer: With the permission of the court, I would like to give a short outline of what my men-
915 tal attitude is towards American, towards the Constitution.

The Court: You should try to show, or you will be permitted to present, the evidence as to what your attitude was at the time you took your oath of allegiance. That is what we are going back to here, the time you became a citizen. All this other evidence is permitted to be received as bearing upon what your mental attitude was at that time. Courts have repeatedly held that the state of mind of a person can be shown by his subsequent conduct.

You are permitted now to testify under oath as to what your state of mind was at the time that you took the oath of allegiance to this country and renounced any allegiance to Germany.

Mr. Knauer: When I took the oath I believed in America and I still do. It was always my contention that citizenship implies duties as well as privi-

leges. I felt at the same time that it was time that we German Americans, if we expected to be treated as citizens and to be considered in community affairs, we must come forward as citizens and shoulder our part of the load. It is my opinion that citizens who count are only those who give time and effort to the support and growth of the community.

I also was inspired to write these letters and to be engaged in various activities because I believed in the Constitution and especially in some of its in-
916 terpretations which I shall outline as follows:

I refer especially to the interpretation of Abraham Lincoln's old friend, Justice David Davis, who wrote in that famous Mulligan opinion that the Constitution of the United States is a law for rulers and people equally in war and in peace and covers with a shield of its protection all classes of men at all times and under all circumstances.

I also believe if it were not permissible for Americans in the pre-war period to express their opinions and to organize for them, then the American people had lost the essentials of their liberty. I refer especially to an editorial in connection with this, quoting the Chicago Tribune of May 23, 1942.

I also believe that any citizen in this country has the right to criticize anything or any person, subject, of course, to the civil and criminal penalties for libel and slander, and he should have the right to discuss political questions and personalities as freely over the radio as he can in print or on the platform.

And I refer specifically to a Federal Court decision, *United States* v. *Rovin*, 12 F. 2d 942: "Among the principles of American citizenship is the right of every citizen to differ with these other citizens on whom has been imposed the responsibility of public office with respect to the policies to be followed in the administration of the affairs of the Republic, and this, of course, includes the right to make all lawful
917 efforts to arouse and direct toward the official representatives of the people the force of public opinion

in regard to such policies. This, surely, is the very essence of the principles of our Constitution, and in the application of such principles I see no reason for discrimination as between citizens and aliens."

And I refer to some opinions which have been given in respect to wartime. I refer to an opinion of the Justice Oliver Wendell Holmes of the United States Supreme Court, handing down the court's decision in the celebrated case of *Froberg* v. *United States*, Vol. 249 United States, who said:

"We do not lose our right to condemn other measures or men because the country is at war." In a recent public statement Attorney General Biddle declared distinctly that it was not the policy of the United States Government in the present conflict to prosecute spokesmen of publishers who took the administration to task for its policies or blunders.

Also, the Congressman, Representative Joseph Martin, a Republican of Massachusetts, read into the record the words of Woodrow Wilson at the outset of the First World War, in which Wilson stated:

"We do not need less criticism in time of war but more. It is hoped that criticism will be constructive, but better unfair attack than autocratic oppression."

I also would like in the following facts in respect to my activities—I relied on the fact that a charter was issued to the German American Citizens Alliance by the Secretary of State at Madison, approving the Articles of Incorporation of the Citizens Alliance in their entirety, including the provision in respect to the case of dissolution.

I relied also on the fact that the relief fund created under the name of Kyffhaeuser Aid, found approval for collection and distribution of money by the issuance of a permit on the part of the State department at Washington.

I also relied on the fact that after a lengthy investigation on the part of the Justice Department, a report of about a thousand pages had been issued in respect to the Bund activities and no action was taken against the Bund or any of its members.

And I would say that undoubtedly the problem of the connection of the defendant with the Kyffhaeuser Aid was thoroughly explored and considered by the Federal Grand Jury at Philadelphia to which I had been called a year ago, as well as by officers of the Department of Justice charged with the responsibility of investigating this case, and as a result of the consideration and investigation neither an indictment nor a presentment has been made by the Federal Grand Jury.

And, on the other hand, the fact never has been brought out that in the year 1930 I had my mother come to this country, she was 60 years old at that time, and that I made an honest effort and honest attempt to keep my mother here for the rest of her life.

The fact was never brought out that I never bought Rueck Wanderer marks. I refer to the special type of marks which could be bought by people who intended to go back to Germany at a special rate.

And the fact was never brought out that when I went to Germany in 1934 that I never gave up my home, I never gave up my furniture, and I kept my car in the garage. I think that shows very amply, you know, that I had the intention to come back to the United States and stay here.

And, then, the fact always was emphasized that I went to Germany and that I stayed there, but never the fact that I came back to the United States.

Now, I wish to state what I understand by Americanism. I always thought that Americanism was love of the American people, my American home, my American family, and that part of America called United States. I understood that America has its own traditions, law and culture, and is a land composed of many creeds and races.

I believed in our American Constitution and its truthful interpretation. I was inspired by the words of Woodrow Wilson in an address to new American citizens. He said: "You have just taken an oath of allegiance to the United States of America, of allegiance to whom? Of allegiance to no one unless it be

God. Certainly not of allegiance to those who temporarily represent this great Government. You have taken oath of allegiance to a great idea, to a great body of principles, to a great hope of the human race, and while you bring all countries with you, you come with a purpose of leaving all other countries behind you, bringing what is best of their spirit, but not looking over your shoulder and seeking to perpetuate what you intended to leave behind in them.

"I certainly would not be one even to suggest that a man cease to love the home of his birth and the nation of his origin. These things are very sacred and ought not to be put out of your heart, but it is one thing to love the place where you were born and it is another thing to dedicate yourself to the place to which you go."

I believed when President Woodrow Wilson said in an address of November 11, 1923, that there is at least one great and powerful nation which can turn away from programs of self interest and devote itself to practicing and establishing the highest ideas of disinterested service and the consistent maintenance of exalted standards of conscience and of right, and for that reason I tried to relieve the suffering of the German people, not only lately but way back to the year 1927 already. I refer especially to my efforts to collect money for the Hindenburg Fund, the German Winter Relief and the Kyffhaeuser Aid.

I believed in the words of Henry Cabot Lodge when he wrote that every man should love and honor the land of his birth and the race from which he springs and keep his memory green. It is a pious and honorable duty.

I believed in the idea of Secretary of Interior Ickes who, speaking before the Council of American Soviet Friendship on November 8, 1843, at Madison Square Gardens, made the following statement:

"For my part I have always believed that any political entity is entitled to that form of government which the majority of its people desire."

I believed in George Washington's words that "America should stay out of war entanglements."

I shared the admiration and respect for Adolf Hitler, and I wish to state that I still do, in the same way as Winston Churchill did when in 1938 he made the statement as follows:

"I have always said that if Great Britain were defeated in war I hoped we should find a Hitler to lead us back to our rightful position among the nations."

I believed what Senator F. Ryan Duffy (now the presiding Judge) said in his speech in June, 1938, at the Washington Park:

"All Americans, no matter what their racial antecedents may be, should be thankful because of the prominence of Germans as a formative element of our people in this great melting pot of various nationalities of Europe. We can be thankful for the fine strains of German nationality which have gone into our makeup".

But in spite of my best intentions, in spite of my repeated assurances that I swore with a clear conscience and without any mental reservation or purpose of evasion whatsoever to support and defend my newly adopted country and to uphold and support and defend its Constitution and its laws, I have been accused of mental reservation and fraud.

In spite of my assurance that in accordance to my oath, in all my actions, in all my thoughts, words and deeds, the dominant motive was the welfare of the American people, and that I positively and definitely intended to bear allegiance and faith to the people, Constitution and laws of the United States, I have been accused of being not attached to the people, the Constitution and the laws of the land.

Yes, I have been informed that I was wrong to think first of America and that my philosophy was archaic, and my ideology was tantamount to Fascism and Nazism.

Your Honor, this reminds me of two cases where the intentions of two outstanding men whose allegiance should never be doubted at all has been wilfully misconstrued. One is the case of Herbert Hoover, whose Americanism certainly cannot be questioned, but who has been charged not so long ago by the Communistic Daily Worker that he, in one of his speeches, had officially opened Hitler's peace offensive. The other case is that of John Cudahy who was quoted in the press as having said, "German soldiers in Belgium acted better than American soldiers would have in like circumstances." It also was stated that "by implication he made it appear that Britain was responsible for the famine in Belgium."

In answer to these statements, the Secretary of Interior Harold L. Ickes called John Cudahy one of the other "simple-minded folk." He also called him "a megaphone through which Hitler is graciously permitted to shout into the ears of Americans; some of them ars naive and simple minded as Cudahy himself."

He also stated, "It may be that he (Cudahy) is merely an unconscious and unwilling mouthpiece of the Fascist gang." He further says, "Our Simple Simon was hypnotized."

But, in spite of these by no means flattering remarks, which meant nothing else but that Cudahy was "playing Hitler's game,"—I quote from the Milwaukee Journal,—that he was used as a simple-minded channel of propaganda.

Your Honor who is presiding in this Court today did not hesitate to attend, not only his funeral when Cudahy suddenly died under peculiar circumstances, but your Honor also acted as pallbearer to pay an old, dear friend the last respects. Your Honor knew that Cudahy meant well, had the best intentions, but his ideas were misconstrued, even by the husband of his own niece. You not only acted as pallbearer because your Honor knew his integrity, sincerity and

honesty, you did so in spite of nasty remarks of others. I was in a similar situation. I also acted as pallbearer for a man who died suddenly under peculiar circumstances, a man who also meant well for the American people and whose intentions were likewise honest and sincere but misunderstood.

Nothing else than having done the act of being pallbearer for George Froboese, is an implication in my trial. The rest of the claims are so ridiculous that I wouldn't take the trouble of calling witnesses in my behalf. Thousands of citizens of Milwaukee have become friends of mine, but I treasure their friendship too high as to call them as witnesses. I know they would have to pay dearly for the good services they would be only too willing to render to me as a friend, but they would be terrorized, they would lose their jobs; but the people whom I know will be in a position to judge as to my qualification as a citizen of this country, *Vox Populi! Vox Dei!*

I thank you, your Honor.

II.

Letter to Milwaukee Press.

864 Mr. Knauer: Now, the letter was, as I said, directed to the Milwaukee press, and reads as follows:

"The vilest, filthiest and most vicious telephone campaign aimed at me, but directed against my wife and children, and going on for over two years, is getting to become a major scandal. The criminal who is apparently used as a tool by others, as he is without work and has no means of self-support, is known
865 to the authorities and has a record of 26 arrests for various crimes, including Navy desertion, dope peddling, robbery, burglary, and extortion. Within the last two years he has made threats continuously, over 70 times during the first three months in 1942, but since April 3, 1942 to date he threatened my family 35 times over the telephone or by letter or in person, thus keeping my wife and children constantly in terror, causing them discomfort and nervousness.

"In the past I have used every legal means to protect my family against the criminal, and have received the finest cooperation on the part of the Milwaukee Police Department, but for some reason or another the criminal has been immediately released or put on one probation after another. For this reason, I see no other alternative but to use the democratic procedure of taking the press into my confidence and to rely on its willingness to discharge its duties to the public and the Government. I take this step, as my case is not the only one, and as I believe that a continuation of threats by letters or telephone without proper interference on the part of our law enforcing agencies will gradually cause a state of panic and will be detrimental to our community.

"I realize, further, that we are living in emotional times, and that we Americans of German descent are exposed to suffering and humiliation, and that possibly the step I am taking will be misconstrued and may lead to civil conspiracy to cause my arrest on
866 the abuse of process and to a malicious prosecution of my person. However, as an American I feel resentful to anyone threatening my wife and children, whether the threats come from a legal or self-asserted saviors of our country, or whether they come from the suave, slick characters who hide behind the criminal in question. We Americans of German descent are not making any threats, we are not organizing jobs or picket lines, we have not gone on strike. We recognize that the country is at war and that we have to be prepared to make whatever sacrifice may be asked of us, but we are supposed to explain what looks to us as a prime example of a plot of terrorizing and provocation.

"We Americans of German descent are expected to die for this country, but to be forced, for tedious, indefinite years, to live and endure slurs and humiliation from criminals within our country demands not only courage but a fortitude greater even than that of Socrates."

Signed by the defendant Paul Knauer.

III.

Wire Sent to Attorney General Concerning Treatment of German American Citizens.

867 Mr. Knauer: Then I also want to call the attention of the court to a wire which I sent to the Honorable Francis Biddle, Attorney-General in Washington, under the date of July 4, 1942, in connection with the articles which appeared in the Milwaukee Journal over the first half of the year 1942, and the wire reads as follows:

"I respectfully request an immediate Federal Grand Jury investigation of statements and innuendoes of the latest issues of the Milwaukee Journal in its filthy and slimy smear campaign against Americans of German descent, creating in the city an atmosphere of malicious hostility and leading to suspicion, ostracism, boycotts, threats by letter or telephone, discharge of loyal workers, and thus producing a state of panic and laying the ember for serious domestic conflict. Attention should be especially directed to an editorial advocating utter disregard of the Constitution in dealing with the German-American element, thus inviting mob violence. In the meantime please direct your Milwaukee office to immediately take proper steps in correcting this situation and preventing any further martyrdom, hatred and characterization of the German-American element in this community. I still consider the Attorney-General powerful enough to protect the rights of work and reputation of American citizens, and believe he will live up to his promises recently given."

IV.

Letter Sent to Justice Department Giving Requested Details.

868 Mr. Knauer: And I—at the request of the Justice Department, I sent a letter giving details, and I added a summary refering to the whole situation, and the summary reads as follows:

"Of these newspaper articles, which cover only a part of the slimy campaign during February to June, 1942, the items 3, 12 and 13 are the most prominent examples. They represent the products of writers who are either financially interested in castigating whatever is of German descent, or blinded by war hysteria, and as a whole in most cases are couched in general, unspecific terms, and purely constitute an attempt of defamation, detraction, villification, calumny and aspersion upon the whole German-American element in this community. The language of the writers can only be judged by its effect.

"In spite of the fact that this community is part of the Middle West, where people are most firmly determined to win the war, giving to the fullest of their ability without shouting, the Milwaukee Journal, instead of concentrating its efforts and devoting its columns to the creation of unity and appeal to patriotism, puts in every effort to set itself up over and
869 above our duly elected law enforcing agencies as a tribunal of its own to blacken and defame, either by malicious slander and false accusations or by wicked insinuations.

"The German-American element has always been peaceful. It does not make threats. It is not organizing mobs or picket lines, and has not gone on strike. It is a law-abiding, taxpaying group whose motive in all their actions, in all their thoughts, words and deeds, is the welfare of this nation. It never pleads for any racial or personal advantage. It only demands that our law enforcing agencies discharge their duties properly, abolish these un-American newspaper tribunals once and for all, prevent a disruption of our community and repair the unbelievable damage caused by this smear campaign. There is no doubt that a determined, challenging, well-planned smear propaganda program will be highly detrimental to our community and will become a menace to the general war effort."

V.

Letter to Whom It May Concern for Use By Discharged Members of the Alliance.

879 Mr. Knauer: I also would like to introduce in evidence a letter which had been mailed to the—beg your pardon—a letter which had been given to members of the German-American Citizens Alliance because they lost their job in consequence of a newspaper article which appeared in the Milwaukee Journal, and the letter reads as follows, dated February 24, 1942:

"To Whom It May Concern: In the face of the fact that the Milwaukee Journal has refused to print a statement released by us on February 21st in response to a front-page article of February 17th in which our organization has been called a pro-Nazi group, we wish to state as follows:

"1. Our organization is a peaceful, law-abiding, taxpaying group of Americans of German descent, whose dominant motive in all their actions, in all their thoughts, words and deeds is the welfare of this nation. We do not plead for any personal or racial advantage; we only demand our rightful place that history accords us and our ancestors.

"2. Our Constitution reads as follows: 'The undersigned have associated and do hereby associate themselves together for the purpose of forming a corporation under Chapter 180 of the Wisconsin Statutes, the business and purpose of which corporation shall be (a) to unite into a union and federation all societies in Wisconsin whose members are of German origin; (b) to maintain and support the Constitution of the United States in its integrity; (c) to preserve all rights unabridged which the Constitution of the
880 United States guarantees to its citizens and people of this nation.'

"3. A decision of the Circuit Court of Milwaukee of October, 1938, in the case of Paul Knauer v. Auditorium Board, reads as follows: 'Statements that the German-American Citizens Alliance, Inc., is affiliated

with the so-called Volksbund has no foundation in fact. The uncontradicted evidence upon this hearing refutes such assertions. The positive testimony discloses that the so-called Volksbund is not a member of the Alliance or in any wise affiliated with it. The applicant, the German-American Citizens Alliance, Inc., is a Wisconsin corporation duly organized under the laws of this State for legal and legitimate purposes.'

"4. We wish to emphasize that our charter is still intact and has not been revoked, because we always conducted our affairs within the scope of our Constitution.

"5. The F. B. I. has received our records on January 5th, 1942, but up to date no action has been started against our organization or any of its officers.

"6. Neither Romi Blasewitz nor Gene Freischmidt have ever been and are not now officers of our organization.

"7. This statement is made with the express assurance that the undersigned is willing to testify under oath at any time in any court in Milwaukee to its truth.

"German-American Citizens Alliance," signed Paul Knauer, Vice-President.

VI.

Petition to Senate and House of Representatives.

881 Mr. Knauer: Under February 8, 1945, I also petitioned the House and the Senate to start an investigation into German-American persecution, and I would like to introduce in evidence one of the mimeographed letters which I sent out to various members of the Senate and House.

The Court: By Senate and House, I suppose you mean of the national Congress.

Mr. Knauer: That is correct, at Washington. And the circular letter reads as follows:

"To the Honorable Members of the United States Senate and the House of Representatives, Washing-

ton, D. C., Gentlemen: Claims have been made that our constitutional liberties are intact in spite of war, but justice demands to state that this view is incorrect in respect to the German-American minority within this country. In spite of the fact that the German-American population is an unorganized, law-abiding, tax-paying, and peaceful minority within our great Republic, in spite of the fact that it is never fomenting strikes and disorders and is doing its best in respect to the war effort, it has to be stated with deep regret that a very zealous, suppres-
882 sive and hostile approach against this minority has been made by various branches of our present administration, and this minority has been subjected to a course of treatment almost tantamount to persecution, thus stamping it officially as a separate political unit, set aside to exceptional legal treatment, with the final intent to ruin every influential German-American economically if legal means are not applicable.

"The measures taken against the German-American minority in this community are outstanding examples and have created a situation which I believe deserve nation-wide attention. If no immediate correction is made, they might easily be more damaging to our American cause than anything they are trying to curb. For this reason, and as there seems to be no other means available to correct a nearly intolerable situation which never has received the attention of Congress, it deserves this petition for redress of grievances enumerated below, is herewith respectfully submitted.

"I also respectfully ask for a full hearing before Congressional committee or several committees, preferably in Milwaukee, so that each member could receive firsthand knowledge and information from various local witnesses and study and determine the legislation which is needed, if any, to protect like nationalities in like situations from like treatments. Pending this investigation, the United States District Attorney should be directed to withhold or sus-

pend all legal proceedings directed against German-
883 Americans if they are for the purpose of denaturalization without criminal basis.

"In the following paragraphs it will be shown that the situation is so serious that immediate action on the part of Congress appears imperative. In the first place, the investigation should be directed against the conduct of the F.B.I. in Milwaukee, which is trying to establish a terroristic strangle-hold on all German-Americans who immigrated after the first war and are courageous enough to refer to their constitutional rights if subjected to a personal investigation. If somebody only offers the slightest objection to personal question or search of his home, the F.B.I threatens him with publicity or loss of job, then goes on to smash his career or family life and to send him or his wife to jail, whatever may be done by hook or crook, because he had dared to remind them of certain fundamental rights.

"Special attention should be paid to the so-called 'admissions' or 'voluntarily' signed statements which seemed to be in vogue, and to which an unbelievable number of German-Americans have been subjected without being informed that their statements would be used against them. Such 'voluntarily' signed declarations should be disregarded and should not be admissible in any court procedure, because the signers have been denied a copy and thus have been prevented from consulting an attorney as to their rights.

"Furthermore, attention should be directed to the fact that hundreds of Germans who applied for citi-
884 zenship, paid their fees, and passed their examinations will not receive their papers for the duration, making them stateless and thus creating a special legal problem. Reference is not made to the few who were granted citizenship, apparently for 'exhibition' purposes.

"Investigation should furthermore disclose why skilled German-Americans without explanation lose their jobs, licenses, and work contracts, why bank ac-

counts of German-American citizens are frozen without due process of law, why loans are denied, why loyal German-Americans are denied a seat in the Advisory Council of the City Government, why the office of the United States District Attorney does not protect German-Americans from detrimental publicity on the part of local newspapers, why the Federal Court and District Courts in Milwaukee lavishly grant one probation after the other to people who threaten German-Americans by telephone or letter. It furthermore should be investigated why German aliens who are willing to fight for his country are denied citizenship and why German-American parents who have fighting sons are interned. At the same time, newspapers should be investigated as to their poisonous propaganda against anything German-American. In this respect a separate complaint had been filed with the Justice Department on July 4, 1942, with detailed information in a subsequent letter. This information should be made accessible to the investigating body. It also should be investigated why the newspapers are exposing names of German-
885 American citizens against whom denaturalization proceedings are considered a long time before the proper legal papers have been served on them.

"It cannot be denied that a German-American problem has arisen, created not by the German-American minority but by acts of the present administration. Such a problem has never existed before. I regret to state that our Federal Government has apparently yielded to special pressures and resorted to proceedings which raise serious questions as to their necessity in the conduct of war. If these measures against the German-American minority are not persecution, they are witch hunting, and have created an atmosphere of malicious hostility, have led to ostracism, suspicion, boycott, loss of work, and have caused a general tension, nervousness and restlessness in this community. Rumors have it that these suppressive measures are only the beginning and are taken either for the purpose of provocation

or revenge. In the interest of unity and harmony in our United States I appeal to you for immediate action to remedy this situation.

"Respectfully yours," signed by Paul Knauer.

VII.

Press Articles Concerning Investigation of Bund By F. B. I.

897 Mr. Knauer: Now I would like to submit in evidence an article which appeared in the Deutscher Weckruf, dated January 20, 1938, and which is headed: "What now, Mr. Dickstein?"

Now, it says: "'Not Guilty,' says the Department of Justice. Its agents find no justification for malicious charges against the German American Bund. Decision rendered after almost a year's strenuous investigation of attacks on the German element."

898 "On January 13th the New York Times printed an Associated Press dispatch from Washington of exactly four inches, only four and a half lines of which contained the statement of an official that 'Justice Department agents found no violation of Federal Laws' in their investigation of the Amerikadeutscher Volksbund.' The rest of the four inches merely rehearsed antecedent history sufficiently familiar to everyone.

"The afternoon papers of the same date carried an Associated Press dispatch which reads as follows: 'Informed persons predicted today that the thousand-page report which Federal agents compiled after investigating the Amerikadeutscher Volksbund would not lead to criminal prosecution of the league's members.' They said the agents found no evidence of Federal law violation by the organization which is modeled along lines of Nazi groups in Germany.

"The Federal Bureau of Investigation undertook this study after some members of Congress sug-
899 gested that the Bund might be flouting such laws as those against sedition and the interstate shipment of firearms."

Mar 17 1946
CHARLES ELMORE CROPLEY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 510

PAUL KNAUER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA

REPLY BRIEF OF PAUL KNAUER, PETITIONER

ODE L. RANKIN,
Counsel for Petitioner.

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Reply will be made to the Arguments of the Solicitor General in the order in which they are made in his brief. But first a few general observations.

Summary of Arguments

The arguments of petitioner in reply to those of the Solicitor General crystalize into these formulas.

I

Only a solemn admission of record is competent to overthrow a judgment of naturalization where the charge pertains only to subjective matters of intention and mental reservations; for, the possibility that the judgment may be right, cannot be reduced to a certainty that it is wrong by any less evidence than an admission.

II

An oath of allegiance is an oral act that operates regardless of any mental reservations, because the oath itself negatives mental reservations, and is an act that the applicant cannot recall. The oath itself can never be challenged by either party. If the court has jurisdiction to administer the oath the applicant becomes a citizen *instanter*, and all future acts are those of a citizen; and the government cannot be heard to challenge the judgment awarding citizenship, because of acts done after admission to citizenship.

Naturalization cases are tried judicially and can be overturned only upon proof of extrinsic fraud; *where* the Government has consented to the application, or made no objection to its grant, the government must show that its consent, or its negative action, was induced or obtained by some active fraudulent conduct on the part of the applicant; otherwise *res adjudicata* is the complete answer.

III

The question of attachment to the principles of the Constitution is one of fact and its decision is submitted by Congress to the State and District Courts for judicial decision; and a judgment of naturalization have the attributes of stability of all judgments and cannot be overthrown except upon evidence rising to the dignity of a solemn admission of record.

IV

There are no conditions attached to the enjoyment of naturalized citizenship and what is done after admission is granted, is done pursuant to the charter of his rights—the certificate of the naturalization court; and no change of war allies, of administration, nor the advent of a war

psychology, can disturb him; for his oath of allegiance is to the Constitution.

V

Congress has not declared that a bund member may not be naturalized and such membership is not inconsistent with an attachment to our Constitution and our form of government in our country; and granting freedom of speech to such a naturalized person creates no danger to our institutions. Freedom of speech is the balance wheel that preserves equilibrium in government.

I

A judgment of naturalization entered in a State Court is res adjudicata of matters submitted to it for its adjudication and only a solemn admission of record is competent to overturn it.

The Solicitor General contends in his Point I that petitioner in swearing in his petition for naturalization that he intended to renounce fealty to the German Reich and that in 1937, when he took his oath of unqualified allegiance to this country, he committed conscious and deliberate fraud.

The reply is that it is fundamental law that courts will not give a repeat performance and try the same issue twice. Every lawyer knows that if he seeks to overthrow an adjudicated issue he must allege some new matter that is sufficient, if established, to make a different basis for adjudication than that which underlies the issue attacked.

It must be shown that the new facts alleged were not known, and could not reasonably have been anticipated, from the existence of the known facts. And where fraud is asserted it must be alleged that such fraud precluded an opportunity to learn the facts and thus have a fair trial of the issues.

Nothing is shown here in the complaint except the conclusion of the pleader that there was a false oath. Whether that oath was false depended on the facts that were proven before the Judge that tried the question of fact in the State Court. The finding and judgment of the trial court upon those facts are therefore conclusive as between the parties.

The answer shows that the Naturalization Service made a full investigation of the facts before the application was heard. The government made no effort to show that it did not have every fact in 1937 that it presented here in 1943. Nor did it show any concealment of any fact. The presumption is, of course, that all facts existing at the time of the hearing in 1937 were presented to the court and adjudicated upon.

Under those conditions the judgment admitting petitioner to citizenship must stand as entered, and standing as entered petitioner became a citizen and as a citizen he was privileged to do all things said to have been done after he became a citizen. They did not disqualify him to be a citizen.

The *Baumgartner* case was stronger on the facts than the case at bar. Baumgartner talked to his diary and put down his otherwise secret thoughts. In this case it shows Knauer was trying to protect German citizens from unwarranted attack. He was protesting unfavorable actions, he was sending charity; not for the Nazis, but for people.

The motive that impelled Knauer's actions was protection and aid to German-American citizens who suffered much in that area.

Only a Solemn Admission Will Overturn a Judgment Which is Res Adjudicata

It is obvious that a judgment which has become final and *res adjudicata* on the issues between the parties cannot be

overthrown except by a solemn admission by the party who may be charged to have obtained it by fraud. And even then a court would want some corroboration of such an admission in a citizenship case. If there be one theory on which the judgment may be sustained it should be adopted. Any possibility that it may be right should protect it.

A Judgment Awarding Citizenship Either Creates a Citizen or It Does Not

A judgment either creates a citizen or it does not. Like an electrical current it is either off or on. The judgment here is fair upon its face and every element of jurisdiction is present. It completely bound petitioner to all duties and obligations of citizenship; only the government could avail itself of any supposed fraud petitioner could not. It is optioned with the government to attack a judgment in such cases; which means that, at most, the judgment was only voidable, i.e., valid until set aside. Being voidable only under such a condition all acts done thereafter were those of a citizen and privileged except as against any possible violation of law, and all prior acts are merged in the judgment.

The question of *res adjudicata* in such a case so decided in a State Court, is definitely passed on in *U. S. v. Ness*, 245 U. S. 319, 325-326.

The question of *res adjudicata* as applied in this case is illustrated in Sections II and III hereof.

II

There can be no fraud in an oath of allegiance for the reason that its character is such that it operates to change the status from alien to citizen. It is an oral act that operates regardless of mental reservations which are negatived in the prescribed oath

The validity of an oath of allegiance depends upon jurisdiction to administer it. It has the character of an act and is in fact an oral act. It has the effect of stepping across the border line from one sovereignty into the adopted country.

A renunciation of allegiance to a foreign sovereignty is not mere words, but an *act* that transfers sovereignty. Even if there were mental reservations, although there can be none, it is the *act itself* that transfers allegiance and the next moment the naturalized citizen is subject to every obligation of the native born. A thousand oaths could give it no greater legal effect. However, the oath was taken as required and mental reservations are negatived in the oath. There are, and can be, no mental reservations in an oath of allegiance. The congressional form provides against it. The nature of an oath is such that one taking it can have no mental reservation. The government wrote it that way and the courts take it as is.

The Oath of Allegiance is to Support the Constitution and Laws of the United States

The oath of allegiance is a renouncement of present allegiance to another sovereignty and a declaration of an unreserved support and defense of our constitution and laws as against all enemies. The oath is the evidence of the transfer of allegiance from the old to the new. This

oral act, this thing—the oath—the Congress has required as an objective and enduring proof of the new allegiance. Without it there can be no naturalization; with it citizenship begins. It cannot be fraudulent for it is a tie that binds one to the other. It is an act, an oral act.

The oath is the final and conclusive proof of the transfer of allegiance, and the person making it will never be heard to say that he entertained any mental reservations, for, embodied in the oath is the statement that it is made without mental reservations, or purpose of evasion.

It is the government that exacts the oath. Its execution ends the proceeding. Citizenship flows therefrom, both *de facto* and *de jure*.

It is the facts of the case, as adjudicated by the State court, that entitled the applicant to admission to citizenship. The oath is the demonstrable fact, that finally, when all antecedent conditions exist, transfers allegiance and it then becomes a muniment of title to citizenship.

The oath engages the new citizen to defend the Constitution in the future against all enemies foreign and domestic. There is not a word of evidence in this record that tends to show that Knauer in any wise failed in that respect. The evidence shows that he relied upon the guarantees of the Constitution and contended for them. What he is shown to have done, he had the freedom to do. Germany was not then our enemy. Knauer was doing nothing against our country, its constitution or its laws.

Naturalization Cases Are Tried Judicially

When Congress submitted the procedure of naturalizing aliens to the judicial department it made those matters subject to judicial practices, methods and procedure, and the judgments of the courts in such cases have the stability

and sanctity of all judicial pronouncements. Things decided and issues adjudicated are to remain decided.

If there is lacking a jurisdictional element in a naturalization proceeding a certificate of naturalization obtained therein is "illegally procured" and is subject to be set aside as a void proceeding, on motion, by appeal, or complaint in equity.

If there is fraud of the character that prevents the government from having an opportunity to properly conduct its portion of the proceedings, or make a proper showing, or defense, then there is jurisdiction in equity to void the judgment by which the certificate of naturalization is granted.

But the matter is judicial with the usual characteristics—the right of appeal for the correction of all errors relating to trial and procedure, and the right to void the judgment on direct attack for lack of jurisdiction or the existence of such fraud as vitiates jurisdiction.

But the Congress gave no jurisdiction to treat a complaint in equity as a writ of error or to undo things which have passed into the realm of *res adjudicata*. This principle is recognized by this Court.

We have referred the court to the case of *U. S.* v. *Ness*, 245 U. S. 319, in which it is stated that the decision of the State Court upon the testimony of witnesses, competency, weight of evidence, and credibility of witnesses, is binding and conclusive, though clearly erroneous, if the government took part in the proceeding—and here it is admitted that it did so take part.

But the Solicitor General relies upon the case of *Luria* v. *U. S.*, 231 U. S. 9, which he says forecloses petitioner's viewpoint. Not at all—it confirms it. The proceeding to cancel a certificate of naturalization because of abandonment of residence is based upon the original validity of the naturali-

zation proceeding—the certificate is cancelled upon a condition subsequent—the abandonment of the United States as a permanent residence. The option is with the government to so contend; it may hold the party to his oath of allegiance and exercise dominion over him wherever it can, but the party cannot voluntarily throw off his citizenship. The government may allege and show that a naturalized citizen has abandoned his residence here and get a decree cancelling the certificate and thereby excuse itself from further obligation to him; but the citizen has no such option, for the law does not so state.

And the fact that Congress picked out that one condition, to litigate a question of intention, is an exclusion of others. But, as said, the judgment proceeds upon the theory of a change of mind and an abandonment of what was once, or could honestly have been, an intention to remain permanently here.

Of course the absent party may show his absence to be only temporary, which shows the original validity of the proceeding. The *prima facie* rule is a legal fiction or basis of an issue of fact as to an abandonment of the United States as a permanent residence, and is intended to shift the burden to the defendant who best knows the facts.

As to Res Adjudicata

The Solicitor General has stated that petitioner's position is that fraud is *res adjudicata* when it is put in issue and litigated. That of course would be true; but petitioner is not saying that he is defending fraud; nor is he admitting there was any fraud in the original issues. The government is the one alleging fraud and we say there is none; but, if there were anything of that nature bound up in the evidence, it was decided against the Government in the trial court; i. e., the judgment speaks that there was none.

Intrinsic or Extrinsic Fraud

The Solicitor General says there is no distinction to be noted between intrinsic and extrinsic fraud so as to have any relevance here and that all types of fraud may be reached in a proceeding to cancel a certificate of naturalization. In that he is mistaken—only one type of fraud is relieved from in equity, as stated in *Toledo S. Co.* v. *Comp. Scale Co.*, 261 U. S. 399, and that is what is called "extrinsic fraud."

He cites as authority for his claim the case of *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 328. But when that case is examined it is seen to be a perfect type of extrinsic fraud. There the Hartford Company so built up its case through the medium of propaganda that the patent office was misled and the Circuit Court of Appeals was so over-impressed by the manufactured sidelight that it based its judgment upon it. Try as it could the Hazel-Atlas Co. never could ferret out the fraud. Years later, 15 years later, the practiced deception came to light in another case and the fraud was *admitted* by the Hartford Co. Though years had passed this Court overthrew the wrong, and truth long crushed proclaimed itself anew. *Hazel-Atlas Co.* v. *Hartford Co.* is the perfect example of an extrinsic fraud. And so is *Toledo S. Co.* v. *Comp. Scale Co.*, 261 U. S. 399, cited in petitioner's original brief.

Whether Called Intrinsic or Extrinsic Fraud, to Be Relieved from It, It Must Have Prevented a Full and Fair Defense.

Chief Justice Taft in *Toledo S. Co.* v. *Comp. Scale Co.*, 261 U. S. 399, 421, said this about intrinsic and extrinsic fraud:

> "There has been much discussion as to whether extrinsic fraud is here alleged, and the case of United

> States vs. Throckmorton, 98 U. S. 61 is cited and numerous other authorities since that case. We do not find ourselves obliged to enter upon a consideration of the sometimes nice distinctions made between intrinsic and extrinsic frauds in the application of the rule, because in any case to justify setting aside a decree for fraud whether extrinsic or intrinsic, it must appear that the fraud charged really prevented the party complaining from making a full and fair defense. If it does not so appear, then proof of the ultimate fact, to wit, that the decree was obtained by fraud, fails."

And in *Hazel-Atlas Co. v. Hartford Co.*, 322 U. S. 238, 244; Mr. Justice Black states the rule as to stability of judgments as follows:

> "This equity rule, which was firmly established in English practice long before the foundation of our republic, the courts have developed and fashioned to fulfil a universally recognized need for correcting injustices which, in certain instances, are deemed sufficiently gross to demand a departure from rigid adherence to the term rule. Out of deference to the deep rooted policy in favor of the repose of judgments entered during past terms, courts of equity have been cautious in exercising their power over such judgments. U. S. vs. Throckmorton 98 U. S. 61."

"Intrinsic Fraud" Is Not Fraud From Which Equity Will Relieve

Applying here the rule as stated by Chief Justice Taft *Toledo S. Co. v. Comp. Scale Co.*, in effect decides, that that which is spoken of as "intrinsic fraud" or perjured statements made in the trial of the case, is not fraud in the legal sense, but is the incident or hazard of all lawsuits; and, therefore, the only fraud is extrinsic fraud, and that that type of fraud is something done which has "really prevented the party complaining from making a full and fair defense" (P. 421).

Applying here the rule as stated by Chief Justice Taft it precludes the action of the government in this case for the reason that the government is not claiming that it was deprived of an opportunity of making a full and fair defense to the proceeding for naturalization. No claim is made that it was in any wise hindered in its preparation, or deceived as to the facts, whereas the record speaks cooperation by petitioner and a complete and independent investigation by the government made in preparation for the hearing. The real claim made by the Solicitor General is that a lot of things have happened since the naturalization trial which, he now conceives, point to a *possibility* that Knauer took his oath of allegiance in 1937 with mental reservations. What has happened is, a war with Germany came on, and viewpoints changed, and war psychology became intolerant of other's views. Racketeering in government condensed the whole horror of war into the words "Nazi" and "fascist" and to smear one with those words was to create an atmosphere of war guilt about him. It is not the form of government that any country uses that condemns, it is the abuse of it, and the racketeering in it, that is the fault. And in this case the assumption of the lower courts was, and of the Solicitor General here is, that war guilt is upon petitioner, when, in fact, the war came two and a half years after petitioner was naturalized. This case was tried once in 1937 when there was no war and petitioner was admitted to citizenship. The government found no fault then, but a trial of the same issue in an era of actual war has put a different complexion on the evidence, caused by the advent of war.

Looking into the briefs and arguments of the many cases heard by this Court where prior adjudications with the fraud element present were involved in the issues, it is seen that, while this Court has examined each case upon its

merits, it has applied the rule contended for by petitioner though sometimes wtihout definitely stating it—preferring, obviously, not to classify fraud unless necessary to the decision. But the rule does have it place in judicial procedure and often guides the way to a correct decision.

III

That portion of the application for citizenship in the prescribed form which states that plaintiff is attached to the principles of the Constitution, is an allegation proven and disposed of in the State court trial, and is res adjudicata between the parties

If the doctrine of stability of judgments is to be adhered to in the administration of justice then the proposition of the Solicitor General that he can single out an issue in a naturalization proceeding and relitigate it can have no force here. He argues that the allegation in the application for citizenship that states that petitioner was attached to the principles of the Constitution was consciously false. That allegation is part of the pleading in the application for citizenship and is an issue which the trial judge of the State Court had to decide upon the evidence offered by petitioner and his witnesses and upon the investigation and recommendation of the Naturalization Service, and evidence of the government, if any.

The point was directly passed upon in disposing of an argument in *U. S. v. Ness*, 245 U. S. 319, 325-326, where Mr. Justice Brandeis said:

> "Opposition to the granting of a petition for naturalization may prevail because of objections to the competency or weight of the evidence, or credibility of witnesses or mere irregularities in procedure. A decision on such minor questions, at least of a state court of naturalization, is, though clearly erroneous,

conclusive even against the United States if it entered an appearance under Section 11."

What Justice Brandeis was disposing of there was a contention that a judgment without jurisdiction over the subject matter (certificate of entry absent) was *res adjudicata*, and he was saying that where a State Court has jurisdiction its action upon the evidence is binding as a thing decided between the parties, but where there was absence of jurisdiction there could be no *res adjudicata*.

The principle was also recognized by the court in another naturalization case. This court denied a certiorari writ to the government which sought a review of the case of *United States v. Sakharam G. Pandit*, 15 Fed. 2d 285. There a trial court had admitted to citizenship a high-class Hindu of the Brahma Caste and of full Indian blood, born in India, who applied for citizenship, claiming he was a "free white person." The application was contested and the trial court heard extended arguments and finally admitted Pandit to citizenship on May 17, 1914. No appeal was taken. On June 23, 1923 the government filed a petition to cancel the certificate as illegally procured. *Res adjudicata* was pleaded; the District Court sustained the plea. The Circuit Court of Appeals affirmed on the ground that in the trial of the issue of fact as to whether Pandit was a free white person the trial court had made an error within jurisdiction and that the doctrine of *res adjudicata* applied. This court denied certiorari (273 U. S. 759). And that was at a date subsequent to the action of this court in denying a right of citizenship to a high-caste Hindu in the case of *United States v. Thind*, 261 U. S. 204.

And so it is to be observed that this court has spoken when necessary to a decision upon the question of *res adjudicata* in naturalization cases, showing they are not in a class by themselves but that the principle of stability of

judgments applies to them as in other cases. If there were to be any differentiation it would seem that the rule would be tightened instead of loosened, as citizenship in this nation is esteemed one of the highest privileges.

But, aside from the fact that the judgment admitting petitioner to citizenship is the highest and most conclusive proof and expression of petitioner's attachment to the principles of our constitution, the government presented no direct evidence to show that Knauer was not attached to the constitution. The only evidence produced was some 1400 pages of condemnation of the Bund and then, having condemned it only to the extent that the trial judge found that, while its teachings "were contrary to the principles of the constitution of the United States," yet, "the fact that a person is a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant judgment of cancellation of a decree of naturalization" (Tr. 27). But Knauer never was a member of the Bund.

The Question of Attachment to the Constitution Was One of Fact for the State Court to Decide

It is admitted by the Solicitor General, as indeed he must admit, that the question of whether petitioner was attached to the principles of the constitution was a frictional question in the naturalization proceeding in the State Court. The Naturalization Service investigated petitioner's background, his character, his beliefs in, and his knowledge of, the constitution, and petitioner and his required witnesses gave evidence thereof; and upon that record and evidence the State Court passed its judgment that petitioner was qualified and thereupon admitted him to citizenship.

Of what purpose is all that proceeding if it may be overturned as matter of course? Has it come to pass that a solemn judgment of court has deteriorated to the point

where it is only *prima facie* correct and subject to be contradicted by oral evidence?

The historical background of the naturalization law recited by the Solicitor General cannot change the fact that Congress delegated to the judicial department the matter of judicially determining the question of attachment to the principles of the constitution, and that means according to the usages and procedure of the Courts; and the doctrine of *res adjudicata* and stability of judgments is a foundation stone of that judicial structure.

The principles of the constitution in which an applicant is to believe, are not specified by Congress and are left to the judiciary to expound or determine. Everyone knows generally what those principles are, but they are variously expressed according to the viewpoint of the individual. Generally speaking they are sovereignty in the people, and delegation of powers by the people to their government, and limitation of those powers; three independent departments, legislative, executive and judicial, the reservation of inviolable rights and freedoms, and the right to representation.

Whether petitioner was attached to the principles of the constitution during the period of his probation was essentially a question of fact for the State Court to decide upon the testimony of the petitioner and his supporting witnesses. It is not claimed that anything was hidden from the Naturalization Service or the trial judge; hence it must be assumed that there was a full and fair hearing upon the issues. Here the court was satisfied with the record and judicially so determined. All the elements of *res adjudicata* are present; the trial was as of April 13, 1937, and subsequent events could not alter the judgment entered on that date. The march of time does not change legal principles but it does change viewpoints.

Opposing counsel in the zeal of his eloquence says that petitioner "bitterly opposed the circulation of any matter critical of Nazi Germany"—referring to finding 33 Tr. 31. The reference there is to the acts of a person at a convention passing out pamphlets of another organization from another city, acting out of turn. There was nothing bitter about it. It was proper under the circumstances. (Witness Segnitz, Knauer trial, page 497.)

It is also said that petitioner sought to introduce the swastika flag into the affairs of the Federation of German American Societies. It is to be remembered that some German societies wanted to keep the emblem of the old republic and some wanted to change to the new. There was much agitation over the matter. It was largely political and was debated among members and societies. It had no other significance than organization politics at that time. Out of the conflict the German American Citizens Alliance grew with which petitioner was later identified and in which he became an officer. It was all a matter of public knowledge and the government's agents, and examiners no doubt had full knowledge of the facts. They did, if they did their duty, and that may be assumed.

It is said by the Solicitor General that Knauer enrolled his daughter in the "bund youth movement." The statement distorts the facts. One of the defendants proved that the youth movement in question was organized by one Prause who had been a boy scout in Germany and had no connection with the bund; that he saw children at the summer camp with no organized entertainment and that he proceeded to organize the boys and girls and built up the youth movement, independent of any organization, along scout lines. The boys had their organization and the girls theirs. It developed into quite an organization, and from all that is said of it, it was a credit to the community. There

was nothing urged as wrong about it, except that it was German and was said to be subject to the influence of propaganda. It was a clean, healthy, wholesome organization developed along scout lines (Witness Prouse Record 1271). All this was known at the time. But that was not wartime. The thought of different eras changes.

But, after it is all said, the State Court was delegated by Congress to settle the question of mental qualifications, intentions, attachments and conduct, and that court tried those questions out and settled them to its satisfaction and that of the Naturalization Service at the time, and by all rules they should remain settled as adjudicated.

IV

Congress Has Attached No Conditions to the Full Enjoyment of Naturalized Citizenship

Once a certificate of citizenship has been granted to one having all the qualifications precedent therefor he need not be looking over his shoulder nor worry over his past. His adopted country will protect him from his prior sovereign. He may lack some basic qualifications for office but the common heritage of freedom is his. He may go about his affairs for a lifetime without being questioned by any official as to his right to go and come. He may lose his citizenship by a condition subsequent as in *Lauria* v. *U. S.*, 231 U. S. 9, but not by any attack upon the validity of the proceeding by which he was admitted to citizenship.

It is essential to the enjoyment of an acquired citizenship that the new-born citizen may be assured that the judgment admitting him will not be overthrown for whim or caprice. Change of war allies, or of administration, or the advent of war psychology, should not disturb him for his oath of allegiance is not to those vested with fleeting authority and

temporary power, nor the government itself, but only to the constitution.

The interesting collection of historical facts concerning the limitations upon acquired citizenship prepared by the Solicitor General in his *point IV, however, is not persuasive* that there are any conditions attached to one's admission to citizenship so far as the judgment admitting him is concerned. The limitations mentioned pertain to the enjoyment of citizenship once it has been granted. His citizenship as an *existing status* is secure. He may not be president, but after all, few of us ever are—and on that he is not far from equality with one hundred forty million others. There exists no power to denaturalize. Void judgments and judgments procured by fraud may be vacated, but those are void *ab initio*.

A validly naturalized citizen may not be disturbed as to his status after he has passed into the common fold.

V

Freedom of Thought and Expression is the Balance Wheel of the Constitution

The accomplished Solicitor General suggests that freedom of thought does not require that the constitution guarantee its own self-destruction, which, of course as stated, is beyond dispute. But that philosophy finds no home here. It is a wishful thought, the reflection of a regret that Congress has not disqualified a bund member or a Nazi from citizenship, for even conclusive proof of such a membership does not now require that citizenship be denied. The District Court so held.

Freedom of speech need not be feared; it holds no threat—except to tyranny. It is a balance wheel in government that is forever striving for equilibrium. Stifle it and democracy will drift into a dictatorship, as history shows.

It was one thing to look upon Nazi socialism as a theory of government as of 1937 and quite another to look upon Nazi war horrors as of 1943. It was one thing for a German to look with pride upon the social gains of the German government up to 1937, and applaud, and quite different to appraise that government in 1943, after a few years of racketeering in social philosophy, plunder, destruction, and starvation.

The essence of the argument in point V of the Solicitor General's brief is that no Germans of the passing generation should be admitted to citizenship here else they will be racketeering in freedom; and, while shouting praise of the Constitution, will be strangling its principles and precepts in every crossroad hamlet in the country.

It is to treat the Nazi philosophy as if it were as deeply rooted as a religion, as indelible as a complexion, as if it were in fact a type of political enthusiasm that dyed the blood, coursed the veins, fanatically intending to consume all democracy and rule the world; and that every German is inoculated with the virus. Of course, Alexander conquered the world, but his followers, where are they? Or Caesar's, Cromwell's, Napoleon's, or the followers of any historic personality? They blend in the haze of history and disappear. And so the followers of Hitler soon will be a memory. We had it in our own country. There were the "yankees" and the "rebs," the "carpet baggers," and "copperheads," to use the war words of that day, but today they live under, protect, and defend the same constitution. Time cures ills. Hatred dies out with the current generation.

But Congress has not said that a bund member or a Nazi shall not be a citizen. Congress prescribes the qualifications.

As long as we can talk back at the ideas we hate we will be safe. Who is to decide, after all, whose ideas are the

most hateful, if there is no freedom to talk hate? To hate seems to be one of our characteristics.

The answer to the question raised by the Solicitor General seems to be that it is a legislative one and that until Congress has spoken as it has in other instances, the remedy is greater care in the Nationality Service rather than seeking to undo what was generally accepted as correct practice prior to the war. It was correct then, it is only thought to be incorrect now.

As long as our attachment is to constitutions and laws, rather than meteoric personalities that rise in each century to be worshiped, and hated as well, we are safe as a nation.

Tardily, and happily so, the cases of one era trying another reach this court for correction and a restraining hand—for one generation will assume to punish the usages of the other. In vain did the judges of Charles I, when arraigned under Charles II, plead their Parliamentary Commission as authority for their judgment that their king be beheaded. They were smeared as "regicides" and ordered executed for adjudging death without jurisdiction.

The blessing is that this court sits far removed from local strife and can form a disinterested judgment upon the human passion of the day.

Conclusion

A judgment of naturalization, in the absence of extrinsic fraud, is *res adjudicata* of all matters submitted to a State Court for adjudication and only a solemn admission is competent to overturn it. There being no such proof in this case the judgment of the Circuit Court of Appeals and the decree of the District Court should be reversed.

Respectfully submitted,

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673706—45

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 510

PAUL KNAUER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 83–96) is reported at 149 F. 2d 519. The findings of fact and conclusions of law of the district court appear at pages 19–43 of the record.[1]

JURISDICTION

The judgment of the circuit court of appeals was entered May 29, 1945 (R. 96), and a petition for rehearing was denied June 28, 1945 (R. 97). On September 22, 1945, petitioner's time to file a petition for a writ of certiorari was extended by Mr. Justice Rutledge to October 15, 1945, and the

[1] References to the printed record are designated as "R." References to the stenographic transcript of the proceedings of petitioner's individual trial are designated as "Tr."

petition for a writ of certiorari was filed on that date. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether a certificate of naturalization may be canceled under Section 338 of the Nationality Act of 1940 upon proof that the alien procured citizenship by fraudulently declaring on oath that he absolutely and entirely renounced all allegiance to the country of origin and that he would bear true faith and allegiance to the United States.

2. Whether there was clear, unequivocal, and convincing evidence of such fraud.

STATUTE INVOLVED

Section 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1158 (8 U. S. C. 738) provides:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

STATEMENT

Petitioner, a native of Germany who had served in the German Army during World War I, arrived in the United States in April 1925 (Ex. PK–1, Tr. 21–22, 156). He was 30 years old at the time and had studied law and economics in Germany for three years (Tr. 156–157). He filed his declaration of intention to become a citizen in December 1929, and his petition for naturalization on November 20, 1936. He took the oath of allegiance and was admitted to citizenship on April 13, 1937. (Ex. PK–1, Tr. 21–22.)

In February 1943, the United States, proceeding under Section 338 of the Nationality Act of 1940 (8 U. S. C. 738), instituted a suit in the District Court for the Eastern District of Wisconsin seeking to cancel petitioner's certificate of naturalization on the ground that it had been secured by fraud in that petitioner had falsely and fraudulently alleged in his petition that he was attached to the principles of the Constitution of the United States and had taken a false oath of allegiance (R. 1–3). On motion of the United States Attorney (R. 11–15), the proceedings against petitioner and thirteen other persons were consolidated for the purpose of receiving evidence common to each case concerning the organization, aims, and activities of the German-American Bund and its affiliates (R. 16–18). After the joint trial on this issue, the district judge entered

findings of fact and conclusions of law, in which he concluded that the Bund and its predecessors were un-American and subversive, and that their teachings were contrary to the principles of the Constitution of the United States, but that the fact that a person was a member of the local unit of the Bund was not in itself sufficient to prove such fraud as would warrant cancellation of a decree of naturalization (R. 19–27).

Thereafter, petitioner's case was tried individually. At the conclusion thereof, the district court entered detailed findings of fact (R. 30–42), which contain a full account of petitioner's activities. We shall set out here a briefer summary of the evidence adduced at petitioner's individual trial.

As early as 1931, six years before his naturalization, and two years before Hitler's advent to power, petitioner expressed approval of the National Socialist Party in Germany (Tr. 504). In 1934 he visited Germany (Tr. 158) and, upon his return, spoke enthusiastically of the accomplishments of the Hitler regime (Tr. 447–449, 467). He told a business associate that while there he had been presented to Hitler (Tr. 473). He also appears to have spoken to German Government officials about the exhibition of German films in the United States for, in January 1935, the Federation of German-American Societies in Wisconsin received a letter from the German Consul, who stated that he would comply with

petitioner's request, made in Berlin, for free delivery of films (Tr. 461-462). During the winter of 1934 and 1935, petitioner was active in obtaining contributions to the German Winter Relief Fund (Tr. 375–376, 418–419), an official agency of the German Government under the direction of the Minister of Propaganda and Enlightenment, for which German consulates solicited money in the United States in order to obtain foreign exchange (Tr. 396, 409–410, 412). Petitioner forwarded the money collected to the German Consul in Chicago (Tr. 368).

The Federation of German-American Societies in Wisconsin had about 70 affiliated organizations in 1935 (Tr. 414). Continuously, from 1933 to 1936, petitioner, Froboese, the leader of the Milwaukee unit of the Bund, and others endeavored to have the swastika flag displayed at important celebrations of the Federation (Tr. 416–418, 506). On May 31, 1935, petitioner made a motion to have the Federation recognize the swastika as the flag of the German Reich, although it was not the official German flag at that time (Tr. 421–422, 435, 436).[2] The swastika was hoisted at a German Day celebration in 1936, without approval by the Federation, and a disturbance ensued in which men in Bund uniforms participated (Tr. 427–428, 430–431, 450). At the next meeting of the Federation, petitioner pro-

[2] The swastika was not officially recognized as the German national flag until September 15, 1935 (Tr. 460).

posed a vote of confidence in the chairman of the entertainment committee, a motion which was understood to mean approval of the showing of the flag. The motion failed and a vote of censure was taken. (Tr. 428–430, 498.)

Following this incident, Froboese and others discussed the formation of the German-American Citizens Alliance to compete with the Federation (Tr. 523–524, 534–535). The alliance took on organized form about January 1937 (Tr. 555, see also Tr. 75). Among the early attendants at the meetings were well known members of the Friends of New Germany and the Bund (Tr. 544–546). The organization was designed to attract persons who were sympathetic but did not wish openly to be known as Bund members (Tr. 565–566). Its constitution and articles of incorporation provided that, upon dissolution, all of its assets were to become the property of the Deutsches Ausland Institut (Ex. PK–12, PK–14, Tr. 161, 162), a German Government agency for the dissemination of propaganda among Germans in foreign countries (Tr. 389–394).

Petitioner was formally accepted as an individual member of the Alliance on February 22, 1937, 55 days prior to his naturalization, and was immediately made a member of the executive committee (Tr. 83). He volunteered to collect articles that attacked the Alliance, German-Americans, and Germany (Tr. 82). On April 12, 1937, the day before he was admitted to citizenship, he was

elected master of ceremonies for a German day celebration to be held on June 5 (Tr. 87). On May 3, it was announced that the German Consul would present to the Alliance the very swastika flag which had been torn down at the Federation celebration the year before (Tr. 88). A few months after his naturalization, petitioner proposed that the Alliance sponsor a solstice ceremony at which a wooden swastika was to be burned as a symbol of the unity of the German people (Tr. 93–94, 553–554).

Petitioner became a dominant member of the Alliance. As its spokesman in the years from 1937 to 1941, he wrote many letters and telegrams in which he vigorously denounced persons who criticized the Bund or the German Government (Tr. 101, 105, 108, 113, 114, 117–118, 167–169, 171–172, 175, 179–181, 185–191, 198–203, 210–211, 219–220, 259–262, 275–276, 278, 285, 293). In speeches in 1937 and thereafter, petitioner stressed the unity of the "Deutsches Volkstum," stating that "with the rise and the fall of the German nation we rise and fall" (Tr. 552–553). He arranged for the public showing of German films glorifying the Nazi cause (Tr. 126, 241–242, 305–306, 512, 516). In December 1938, together with Froboese, petitioner made threats against the manager of a radio station which cancelled a contract for a German radio hour, on which the Horst Wessel song had previously been sung (Tr. 570–576, 590–595). In March 1938, petitioner was elected vice-president

of the Alliance and thereafter presided at most of its meetings (Tr. 113–119, 127–139).

The Alliance and the Bund worked closely together. The Bund camp was made available to Alliance members (Tr. 86–87), and Alliance festivals were held at the camp (Tr. 94–107, 133, 136). The Alliance supported various Bund programs (Tr. 104, 105, 106, 127, 128). At petitioner's suggestion, the Alliance agreed to support Froboese, the Bund leader, by supplying an attorney in an action brought against him (Tr. 109–112). In 1940 the Youth Group of the Bund was admitted into the Alliance at the request of Froboese, who thought that more members might be secured if the Youth Group were less openly associated with the Bund (Tr. 134, 542–543).

In 1936, prior to his naturalization, petitioner attended Bund meetings (Tr. 470–471, 681, 685). In that year he enrolled his 10-year old daughter in the Jugendschaft, the Youth Movement of the Bund (Tr. 361, 597). Mrs. Merton, who acted as secretary to Bund leader Froboese from March 1938, testified that, during the period she worked for Froboese, he and petitioner cooperated closely on Bund matters (Tr. 23–27). Froboese consulted petitioner about articles in the Bund's organ, the Weckruf, about speeches to be given by Froboese, and resolutions to be offered at the 1938 Bund convention (Tr. 27–31). During Froboese's absence, Mrs. Merton was directed to consult petitioner for advice on Bund matters

(Tr. 30). In August of 1938, when Froboese was called to the United States Attorney's office for investigation, he immediately called petitioner and told him of the precautions he had taken to send his correspondence and documents to German consular officials and to Germany (Tr. 45–48). Petitioner attended closed meetings of the Bund leaders and acted as adviser (Tr. 676–677, 678–680, 707–709, 722, 729, 730). Letters signed jointly by Froboese and petitioner were sent to Hitler and to Bohle of the Ausland's Institut (Tr. 48–51, 54, 58). Birthday greetings sent to Hitler by Froboese and petitioner closed with the phrase "in blind obedience I follow you" (Tr. 49–51). In 1939, petitioner actively participated in recruiting skilled workers to return to Germany to work in industries there (Tr. 677–678, 715–717, 725–728).

In 1938 petitioner told Mrs. Merton that the Bund represented the "Fuehrer's grip on American Democracy" (Tr. 62–63). When questioned as to how he reconciled his sentiments with his American citizenship, he stated that citizenship was "a good thing to hide behind" (Tr. 63).

The detailed findings of the district judge are summed up in his last two findings as follows (R. 41–42):

> 60. The attachment of the defendant Knauer in the year 1931 to the aims and objects of Hitler's National Socialist movement, his allegiance and attachment to the

Third Reich as manifested by his statements and his frequent use of the Nazi salute in public, his devotion to and promotion of the display of the swastika flag and ceremonies using it in symbolic pledge of fidelity to the Reich, his fierce concern over the good name and honor of the German race, his bitter and acrimonious denunciation of everything which interfered with or stood in the way of the fortunes of the German Reich, his belief in and advocacy of the German racial concept of duty and obligation of all Germans to the fatherland regardless of citizenship, his belief in and attachment to the principles and concepts of National Socialism, his espousal of the aims and objects of the German-American Bund and his active participation therein for the promotion of its aims and objects, his promotion and domination of the German-American Citizens Alliance to further the aims and objects of the Bund, his uninterrupted effort by word and deed to politically activate our German-American people in the interests of the German Reich, his persistent efforts among German-Americans, by means of charitable programs, speeches and movie films, to revive in them a feeling of fidelity and loyalty to the German Reich, the assistance he rendered to the consular representatives of the Reich in the attainment of matters advancing German interests, his fervent devotion and blind attachment to the Fuehrer at a

time when the German Reich was hostile to the United States, his lack of affection for or devotion to the United States, his cynical evaluation of his own American citizenship, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant at the time he filed his petition for naturalization did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, and at the time of his naturalization and at all times thereafter the defendant did not in fact renounce and abjure all allegiance and fidelity to the German Reich, but intended to retain and did retain allegiance and fidelity to the German government.

61. Defendant's belief in and adherence to the concepts of National Socialism as practiced by the Nazi Party in Germany and the German-American Bund in the United States, his activities in promoting the establishment of these concepts in the United States, his opposition to the constitutional principle of political and racial equality of all persons under law regardless of race and color, as evidenced by his campaign of race defilement particularly against the Jews, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant Knauer at the time of his filing his petition for naturalization, at the time of his naturalization, and at all times thereafter was

not in fact attached to the principles of the Constitution of the United States and did not intend to support the same.

On the basis of these findings the judge concluded that petitioner's certificate of naturalization was "fraudulently and therefore illegally procured" and should be canceled (R. 43). The judgment canceling the certificate of naturalization (R. 44) was affirmed on appeal (R. 96).

ARGUMENT.

Petitioner's chief contentions are that a false oath of allegiance is not the type of fraud which will support a suit for cancellation of a certificate of naturalization under Section 338 of the Nationality Act, and that the judgment admitting him to citizenship is res adjudicata on the question of his right to naturalization (Pet. 11–15, 20–37, 45–47). These questions were discussed at length in the Government's brief in the case of *Baumgartner* v. *United States* (No. 493, October Term, 1943, pp. 39–58). Neither the decision in that case, 322 U. S. 665, nor that in *Schneiderman* v. *United States*, 320 U. S. 118, supports petitioner's position. On the contrary, this Court in the *Schneiderman* case expressly declared that it was not passing on the question of fraud and, implicit in the *Baumgartner* decision, we think, is the recognition that fraud in the oath of allegiance is a basis for cancellation of a certificate of naturalization, provided, of course, that the Government's

case has "that solidity of proof which leaves no troubling doubt." 322 U. S. at 670.

This is the first case decided by a circuit court of appeals since the *Baumgartner* decision in which such solidity of proof has been found. We submit that the decision below is in full accord with the principles enunciated by this Court in the *Baumgartner* and *Schneiderman* decisions. Petitioner was naturalized in 1937, four years after Hitler had come to power, when Nazi theories had already been translated into practice, and Nazi aims were well known. Petitioner, an educated and articulate man, who had visited Germany and had there read Mein Kampf (Tr. 377–378), was unquestionably familiar with Nazi ideals and practices. He must have known that Nazi principles of leadership and racial domination were incompatible with American democracy, and that Nazi concepts of the German Volkstum required an overriding allegiance to the Hitler Reich which was incompatible with the wholehearted renunciation of allegiance to the country of origin required for American citizenship. The evidence establishes beyond a troubling doubt that, before petitioner was naturalized, he had not only espoused these principles, but was actively seeking to further them. His aid to the German Winter Relief Fund, his persistent efforts to secure recognition of the swastika even before it became the official flag of Germany, his attendance at Bund meetings, his enrollment of

his daughter in the German Youth Movement, all mark him with the Nazi stamp before the date of naturalization. The fact that in February 1937, just before his naturalization, he was immediately elected a member of the executive committee of the German-American Alliance shows that the Bund leaders who formed that organization had full confidence in his loyalty to their ideas. Petitioner seems to have become more openly active at about the time of his naturalization and during the years that followed, but that fact, considered together with petitioner's known prior Nazi sympathies, tends to support rather than to negate the charge of fraud. That his activities increased in scope at about the time of his naturalization suggests that he was artfully using his citizenship, as he later stated, as "a good thing to hide behind." Considering all the circumstances, we think that the evidence in this case establishes, in the terms of the *Baumgartner* decision (322 U. S. at 672), not only "objective falsity" of his oath of allegiance, but its "perjurious falsity" as well.

This case is entirely different from that of Baumgartner. In 1937, when petitioner was naturalized, the German Government was that of Hitler, not of the Weimar Republic, and the evidence is clear that petitioner never intended to and never did abjure allegiance to Hitler Germany. Moreover, the evidence here did not consist solely of expressions of opinion long after

naturalization; the proof establishes that petitioner was an active exponent of Nazi views prior, during, and immediately after the time of naturalization. The *Baumgartner* and *Schneiderman* decisions do not hold, as petitioner claims (Pet. 12, 13, 14, 19, 40–42), that proof of conduct subsequent to naturalization is irrelevant; they merely hold that subsequent conduct is not of itself sufficient to establish the state of mind at the time of naturalization. Certainly, activity immediately following the date of naturalization which is part of a continuous course of action evincing loyalty to the country of origin, is strong probative proof that the abjuration of former allegiance had not been made in good faith. Finally, petitioner, as distinguished from Baumgartner, did not confine his activities to expressions of opinion alone; his beliefs manifested themselves in overt acts of direct aid to the Nazi cause. Petitioner stresses the fact that there is no direct proof of his membership in the Bund (Pet. 14, 49). However, he was shown to have been a leading voice in Bund councils in 1938, working closely with Froboese, the Bund leader, and it is fair to infer that he did not attain such a degree of prominence without prior service in the cause. This evidence amply justifies the finding of the district judge that "petitioner was a member of the Milwaukee unit of the Bund; that he was so considered by its officers and members." (Finding 50, R. 38.) Moreover, just as

membership per se is not the decisive factor in establishing fraud in the oath of allegiance, so lack of membership per se would not necessarily disprove fraud. The record as a whole fully supports the trial judge's findings that "most of his [petitioner's] interests and activities were in behalf of the Bund; and that, though completely aware of its aims and purposes, he deliberately vigorously promoted the objectives of the Bund" (Finding 50, R. 38). More than that, the evidence establishes that most of petitioner's activities were in behalf of Nazi Germany and that, although aware of its aims and purposes, he deliberately and vigorously promoted the objectives of Nazi Germany. Whether he furthered those purposes by Bund membership or by appearing as a "front" without officially joining the Bund is unimportant. The vital factors are that petitioner gave his loyalty to Hitler Germany before he was naturalized, that he never abjured that loyalty, and that his purported abjuration of loyalty to Germany and oath of allegiance to the United States were deliberately and consciously false.

CONCLUSION

The decision below is in accord with the principles enunciated by this Court in the *Baumgartner* and *Schneiderman* cases. The judgment is supported by clear, unequivocal and convincing evidence that petitioner, who at the time of nat-

uralization actively espoused and assisted the cause of the then existing Government of Germany, was guilty of conscious fraud in taking an oath of allegiance to the United States. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 510

PAUL KNAUER, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 83–96) is reported at 149 F. 2d 519. The findings of fact and conclusions of law of the district court appear at pages 19–43 of the record.[1]

JURISDICTION

The judgment of the circuit court of appeals was entered May 29, 1945 (R. 96), and a petition

[1] References to the printed record are designated as "R." References to the stenographic transcript of the proceedings of petitioner's individual trial are designated as "Tr." References to the consolidated transcript are designated as "Con. Tr."

for rehearing was denied June 28, 1945 (R. 97). On September 22, 1945, petitioner's time to file a petition for a writ of certiorari was extended by Mr. Justice Rutledge to October 15, 1945 (R. 100). The petition for a writ of certiorari was filed October 15, 1945 and was granted December 10, 1945 (R. 100). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the evidence establishes beyond a troubling doubt that petitioner committed fraud when he foreswore allegiance to the German Reich and took an unqualified oath of allegiance to the United States.

2. Whether a certificate of naturalization may be cancelled upon proof that the applicant committed fraud in taking the oath of allegiance.

3. Whether the evidence establishes beyond a troubling doubt that petitioner committed fraud when he represented that he was attached to the principles of the Constitution of the United States.

4. Whether a certificate of naturalization may be cancelled upon proof that the applicant committed fraud in representing his attachment to the principles of the Constitution of the United States.

STATUTES INVOLVED

The pertinent statutory provisions appear in the Appendix, *infra*, pp. 113–115.

STATEMENT

Petitioner, a native of Germany, arrived in this country in April 1925. He filed his declaration of intention to become a citizen in December 1929 and his petition for naturalization on November 20, 1936. He took the oath of allegiance and was admitted to citizenship on April 13, 1937. (Ex. PK 1; Tr. 21–22; Fdg. 28, R. 30.)

In February 1943, the United States, proceeding under Section 338 of the Nationality Act of 1940, 8 U. S. C. 738 (*infra*, pp. 113–114), instituted a suit in the District Court for the Eastern District of Wisconsin to cancel petitioner's certificate of naturalization on the ground that it had been secured by fraud in that petitioner had falsely and fraudulently alleged in his petition that he was attached to the principles of the Constitution of the United States and had taken a false oath of allegiance (R. 1–3). On motion of the United States Attorney (R. 11–15), the proceeding against petitioner and thirteen other persons were consolidated, pursuant to Rule 42 (a), F. R. Civ. P., for the purpose of receiving evidence common to each case concerning the organization, aims, and activities of the German-American Bund and its affiliates (R. 16–18). After the consolidated trial on this issue, the district judge entered findings of fact and conclusions of law, in which he concluded that the Bund and its predecessors were un-American and subversive,

and that their teachings were contrary to the principles of the Constitution of the United States, but that the fact that a person was a member of the local unit of the Bund was not in itself sufficient to prove such fraud as would warrant cancellation of a decree of naturalization (R. 19–27).

Thereafter, petitioner's case was tried individually. At the conclusion thereof, the district court entered detailed findings of fact (R. 30–42), on the basis of which he concluded that petitioner's certificate of naturalization was "fraudulently and therefore illegally procured" and should be cancelled (R. 43).[2] The judgment cancelling the certificate of naturalization was affirmed on appeal (R. 96).

The evidence for the Government may be summarized as follows:

When petitioner came to this country in 1925, he was 30 years old. He had served in the German army during World War I and had received the Iron Cross. Thereafter he studied law and economics in Germany for three years (Tr. 156–157; Fdg. 27, R. 30). He settled in Milwaukee, Wisconsin, and conducted his own insurance business there (Tr. 466–467, 480).

As early as 1931, petitioner told an acquaintance who came from the same town in Germany

[2] Petitioner was the only one of the fourteen defendants involved in the consolidated trial whose certificate was ordered cancelled (R. 84).

that the Nazi party in Germany was progressing and that its aims were admirable. He said that when the witness had resided in this country longer he would realize that it was necessary to have the same party here because of the Jews and Communists. (Tr. 503–505; Fdg. 29, R. 30.) A witness who saw the petitioner regularly in the years 1931 to 1933 testified that petitioner blamed Germany's downfall on Jewish capital; that he disliked the Weimar Constitution, and was opposed to any republican form of government (Tr. 445–446).

Petitioner visited Germany from May to November 1934 (Tr. 158–159). While there he read the German edition of *Mein Kampf* (Tr. 377–378; Fdg. 30, R. 30). He apparently spoke to German officials about the exhibition of German films in the United States for, in January 1935, the Federation of German-American Societies in Wisconsin received a letter from the German Consul who stated that he would comply with petitioner's request, made in Berlin, for free delivery of films (Tr. 461–462; Fdg. 32, R. 31). Upon his return, petitioner proudly reported to a friend that he had been presented to Hitler (Tr. 473; Fdg. 30, R. 30). He also told two of his acquaintances that he had been offered a position with the German government at 600 marks per month (Tr. 449, 484; Fdg. 30, R. 30–31). He asked another

witness, who had been interested in the case of two brothers convicted of draft evasion in the First World War, to write an article on the case for publication in Germany, in order to show that "people under totalitarianship can better live than under a democracy" (Tr. 56–458).

After his return from Germany, petitioner spoke enthusiastically of the accomplishments of the Hitler regime (Tr. 447–449, 466–469, 628). He said that Hitler was the savior of Germany, that he had solved the unemployment problem, whereas this country was suffering because of Jewish capitalism (Tr. 466–467, 469, 473; Fdg. 30, R. 30–31). He praised the totalitarian form of government and the Nazi Youth Organization (Tr. 447–448; Fdg. 30, R. 30–31). In 1936, when one witness showed him a book describing treatment of prisoners in German concentration camps, petitioner threw the book back and told the witness that he would be thrown out if he called again (Tr. 451). In 1937, when another witness suggested that there was no unemployment in Germany because Hitler had killed so many workers, petitioner became excited, called the witness a communist, and suggested that his relatives in Germany would all go to a concentration camp (Tr. 629–630).

During the winter of 1934–1935, petitioner was active in obtaining contributions to the German

Winter Relief Fund (Tr. 375–376, 418–419; Fdg. 31, R. 31), an official agency of the German government under the direction of the Minister of Propaganda and Enlightenment, for which German Consulates solicited money in the United States in order to obtain foreign exchange (Tr. 406, 409–410, 412). Petitioner forwarded the money collected to the German Consul in Chicago (Tr. 368).

The Friends of New Germany, known after 1936 as the German-American Bund, had a branch in Milwaukee. Its leader was George Froboese, who was also Midwestern Gauleiter, and later national leader of the Bund. (Con. Tr. 77, 359, 383–385, 467, 495, 969–970.) The findings of the trial judge on the consolidated trial, that the Bund espoused the political philosophy of National Socialism as taught, advocated and practiced by Nazi Germany, that such theories were incompatible with a democratic form of government, and that they required allegiance to Hitler and Germany irrespective of foreign citizenship (Findings 12, 14, 16 (R. 23–24)), are amply supported by evidence[3] and are not here challenged. Petitioner denied membership in the Bund (Tr. 365). He was, however, shown to have participated in Bund meetings in 1936 (Tr. 681–682, 685–686;

[3] Con. Tr. 74, 87, 138–140, 144–146, 267–269, 278, 355, 387–389, 438–439, 450–451, 587, 618–623, 813, 927, 987.

Fdg. 42, R. 35)[4] and, in the summer of 1936, he and his family had a tent at the Bund camp (Tr. 470–471; Fdg. 42, R. 35). He defended the Bund to a friend who appeared as a witness for him at the time of his naturalization (Tr. 489).

In October 1936, petitioner enrolled his 10-year old daughter in the *Jugendschaft,* the Youth Movement of the Bund (Tr. 361, 597; Con. Tr. 597–599; Fdg. 45, R. 37). This was a group organized pursuant to instructions from national Bund Headquarters to instill the ideology of National Socialism in the minds of children of German descent. (Fdgs. 21, 45, R. 26, 36–37). It was patterned after the Hitler Youth Movement in Germany (Con. Tr. 108, 112, 248–252, 423–428, 791, 922–924). The children wore uniforms and were taught to salute with the raised arm, using the greeting "Heil" (Tr. 604; Con. Tr. 791, 921–924).[5] Home evenings were conducted at which National Socialism, the life of Horst Wessel, and

[4] In 1935 national Bund leaders instructed German nationals to retire from the organization, but a Prospective Citizens' League was formed which German nationals could join and which entitled them to all the privileges of members (Con. Tr. 242–244, 405–406). There were also sympathizer members, persons who for various reasons were afraid to assume membership openly, and who were allowed to join under an assumed name (Con. Tr. 395–397, 406; Tr. 529–531; Fdg. 49, R. 38).

[5] The Bund originally used the greeting "Heil Hitler," but in July 1933 changed to "Heil" or "Sieg Heil" (Con. Tr. 179–180). In 1938 the greeting "Free America" was adopted (Ex. 36A, Con. Tr. 364).

other similar topics were discussed (Tr. 605–606, 616–617). The group was taught the Horst Wessel Song and other songs of allegiance to Hitler (Con. Tr. 924–927). It regularly participated in a solstice ceremony in which a large swastika was burned to signify the unity of the German people everywhere (Con. Tr. 927, 1397). Petitioner attended meetings of the Youth Group in Milwaukee and at the Bund camp (Tr. 597, 606; Fdg. 45, R. 36–37).

There existed in Wisconsin a Federation of German-American Societies, organized in 1931 to coordinate the work of the numerous German organizations in that region (Tr. 413–414). In 1935 it had about 70 affiliated organizations having a total membership of approximately 8,000 (Tr. 414; Fdg. 34, R. 31). Petitioner was a delegate to the Federation (Tr. 416, 418), and at a meeting in 1935, he instructed another delegate to cease distributing pamphlets opposing the Nazi form of government (Tr. 497; Fdg. 33, R. 31). It was the policy of the Friends of New Germany and of the Bund to infiltrate into the older German societies and to induce them to show their sympathy with the Hitler Government by displaying a swastika flag at public functions (Con. Tr. 143, 443). This policy was followed by the Milwaukee Unit of the Bund (Con. Tr. 974–975; see also Con. Tr. 754–755). Continuously from 1933 to 1936, Froboese, the leader of the Bund, and others en-

deavored to have the swastika flag displayed at important celebrations of the Federation, and petitioner joined in that effort (Tr. 416–418).

On May 31, 1935, petitioner made a motion to have the Federation recognize the swastika as a flag of the German Reich, although it was not the official German flag at that time (Tr. 421–422, 435–436).[6] It was decided to have the affiliated organizations vote on the flag question; when this was done a majority voted against display of the swastika (Tr. 423–424). At the meeting at which the vote was reported, Froboese became abusive and was ordered out (Tr. 424–425; Fdg. 34, R. 31). Froboese and a few organizations withdrew from the Federation at that time, including an organization of German veterans known as the Krieger Kamaradschaft (Tr. 425).[7] Petitioner apparently did not then withdraw from the Federation. The swastika flag was raised at the German Day celebration in 1936 without approval by the Federation, and a disturbance ensued in which men in Bund uniform participated (Tr. 427–428, 430–431, 450; Fdg. 36, R. 32). At the next meeting of the Federation, petitioner proposed a vote of confidence in the Chairman of the

[6] The swastika flag was not officially recognized as the German national flag until September 1935 (Tr. 460).

[7] The Krieger Kamaradschaft thereafter used the swastika as its official emblem (Ex. PK 193; Tr. 352, 526). Petitioner became president of the Kamaradschaft in 1938 (Tr. 160, 525). When he joined the society does not appear.

Entertainment Committee, a motion which was understood to mean approval of the showing of the swastika flag. The motion failed and a vote of censure was taken (Tr. 428, 430, 498; Fdg. 36, R. 32). The Chairman, Voight, thereupon resigned (Tr. 430).

Following this incident, Froboese and others discussed the formation of a German-American Citizens Alliance to compete with the Federation (Tr. 523–524, 534–535; Fdg. 36, R. 32). The Alliance was formally organized around January 1937 (Tr. 555, see also Tr. 75; Fdg. 36, R. 32). Among the early attendants at the meetings were well known members of the Friends of New Germany and the Bund (Tr. 544–546), including Voight who had resigned from the Federation after the vote of censure (Tr. 103; see Fdg. 37, R. 32). The constitution and articles of incorporation of the Alliance provided that, upon dissolution, all of its assets were to become the property of the Deutsches Auslands-Institut (Ex. PK 12, PK 14; Tr. 161–162),[8] a German government agency for the dissemination of propaganda among Germans in foreign countries (Tr. 389–394). The Alliance was designed to attract persons who were sympathetic but did not wish openly to be known as Bund members (Fdg. 37, R. 32). The first

[8] Petitioner knew of the provisions of the constitution for he was appointed to check the articles of incorporation, and a copy was found among his papers (Tr. 86, 161).

president of the organization, a witness for the Government, was asked by petitioner on cross examination (Tr. 558):

> Q. Is it not a fact that as chairman of the German American Citizens Alliance you strongly stated whenever you presided that there was no connection whatsoever between the Citizens Alliance and the Bund?
>
> A. Yes, we let the people believe that, Mr. Knauer.

* * * * *

Subsequently, the district judge asked (Tr. 565–566):

> Q. You said in answer to the first question on cross-examination that the Alliance desired to give the impression, as I understood it, that they had nothing to do with the Bund. Just what did you mean by that? Did the Alliance members really know that there were Bund members that were members of the Alliance?
>
> A. Well, the German American Citizens Alliance was an organization formed for the purpose to bring into their ranks and their midst a number of people who probably didn't and couldn't join up with the Bund because it was called pro-Nazi. Now, we were an organization, an in-between, and we wanted to get these people into our organization. That was the purpose of it, one of the purposes of our organization.

On re-cross examination by petitioner (Tr. 567):

Q. Then you mean to state that you misled each and every person of the Citizens Alliance by the statements you made today on the witness stand?

* * * * *

A. Absolutely not. You all knew it, and you knew it.

Petitioner was formally accepted as an individual member of the Alliance on February 22, 1937, 55 days prior to his naturalization, and was immediately made a member of the executive committee (Tr. 82). He volunteered to collect articles that attacked the Alliance, German-Americans, and Germany (Tr. 82; Fdg. 38, R. 32). On April 12, 1937, the day before he was admitted to citizenship, he was elected master of ceremonies for a German day celebration to be held on June 5 (Tr. 87). On May 3, it was announced that the German Consul would present to the Alliance the very swastika flag which had been torn down at the Federation celebration the year before (Tr. 88). The presentation took place and the Alliance sent a letter of thanks to the Consul (Tr. 110–111; Fdg. 43, R. 35–36). A few months after his naturalization, petitioner proposed that the Alliance sponsor a solstice ceremony at which a wooden swastika was to be burned as a symbol of the unity of German people everywhere (Tr. 93–94, 553–554; Fdg. 38, R. 32–33).

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Petitioner became a dominant member of the Alliance (Fdg. 38, R. 32–33). As its spokesman in the years from 1937 to 1941, he wrote many letters and telegrams in which he vigorously denounced persons who criticized the Bund or the German Government (Tr. 101, 105, 108, 113, 114, 117–118, 167–169, 171–172, 175, 179–181, 185–191, 198–203, 210–211, 219–220, 259–262, 275–276, 278, 285, 293; Fdg. 39, R. 33). Many of these letters of protest were written in the name of the Alliance without prior approval by the organization (Tr. 293, 295, 555; Fdg. 39, R. 33). Although the Alliance never represented more than approximately 250 persons (Tr. 537–538), petitioner often purported to speak in the name of the entire German-American element. (See *e. g.*, Tr. 169, 200, 242, 261; Fdg. 53, R. 39.) In March 1938, petitioner was elected vice-president of the Alliance, and thereafter he presided at most of its meetings (Tr. 113–119, 127–139; see Tr. 652; Fdg. 38, R. 32–33).[9] In 1938, when a reporter asked the Alliance president about an Alliance celebration, he was told "I have nothing to do with the celebration in October. You must call Mr. Knauer" (Tr. 221).

Petitioner, usually in the name of the Alliance, vigorously defended the Nazi cause. In speeches in 1937 and thereafter he stressed the

[9] Froboese had suggested to the president of the Alliance that he resign in favor of petitioner (Tr. 556).

unity of the German *Volkstum*, stating that "with the rise and fall of the German nation we rise and fall" (Tr. 552–553; Fdg. 51, R. 38). In August 1937, he criticized a minister who declared that the German Government was hostile to Christianity (Tr. 171–172; Fdg. 55, R. 40). That same month, the Alliance refused to participate in an affair sponsored by an organization which would not fly the swastika flag (Tr. 102). Petitioner arranged for a public showing of films distributed by U. F. A., part of the official German propaganda organization (Tr. 112, 125–126, 241–242, 305–306, 395, 512, 516, 684). In April 1939, he made a prefatory speech at an Alliance-sponsored evening at which films were shown glorifying the German Army, Horst Wessel and Hitler (Tr. 226, 514–516). In 1940 he criticized the Mayor of Milwaukee who stated that Poland would some day "slay the giant" and wrote the mayor that he had been misinformed as to the terror which the Polish Government had practiced against the German minority in Poland (Tr. 260–262). In 1941 he condemned the Governor of Wisconsin for making disparaging remarks about the country of his origin and thus injuring the "great German nation" (Tr. 282; Fdg. 55, R. 40–41). In March 1941, he protested against the return of escaped German prisoners to Canada (Tr. 284–285). After World War II started, petitioner and the Alliance helped the

Kyffhaeuser Aid Society collect money for German prisoners of war (Tr. 137–138, 315–320). In 1941, when the Wisconsin Federation of German-American Societies pledged itself to maintain the democratic form of government and fight totalitarianism, petitioner issued "an appeal to German-Americans" in which he stated that this declaration constituted "open warfare against the present German Government" and was a plan "for the purpose of creating discord among the German people and inducing their own relatives living in Germany to revolt against the present German Government" (Tr. 290–291).

The Alliance and the Bund worked closely together (Fdg. 43, R. 35). The Bund camp was made available to Alliance members (Tr. 86–87), and Alliance festivals were held at the camp (Tr. 94, 107, 135, 136; Fdg. 43, R. 35–36). In June 1937, the Alliance participated in funeral services for an O. D. man (Tr. 96).[10] On August 2, 1937, the Alliance decided to support the German-day celebration of the Kenosha branch of the Bund (Tr. 97–98) and subsequently sent a letter of protest when the use of a public park was denied the group (Tr. 101; Fdg. 39, R. 33). It also supported various other Bund programs (Tr. 104, 105, 106, 127, 128). When Bund celebrations conflicted with Alliance programs, the latter were

[10] The O. D. (Ordnungs Dienst) was the uniformed guard of the Bund (Con. Tr. 107, 410–411; Fdg. 6, R. 22).

postponed (Tr. 104; Fdg. 43, R. 35–36). The Alliance supported the Youth Group of the Bund (Tr. 122, 133) and on the other hand, the Youth Group held a benefit performance for the Alliance (Tr. 123–124, 550; Fdg. 43, R. 35–36). The Bund supplied O. D. men for protection when the Alliance displayed German films in 1939 (Tr. 514–516, 641; Fdg. 43, R. 35–36). In March 1938, at petitioner's suggestion, the Alliance agreed to support Froboese, the Bund leader, by retaining an attorney on his behalf in an action against him (Tr. 109, 112). In 1940, the Youth Group of the Bund was admitted into the Alliance at the request of Froboese who thought that more members would be secured if the Youth Group were less openly associated with the Bund (Tr. 134, 542–543; Fdg. 45, R. 36–37). In the spring of 1938, Froboese reported to Gissibl, leader of the Chicago unit of the Bund, that he was in close cooperation with the Alliance in Milwaukee (Con. Tr. 208).

As spokesman for the Alliance, petitioner constantly defended the Bund. In 1938 when there was an attempt to deny the Bund the use of the Milwaukee Auditorium, the Alliance rose to the defense of the Bund (Ex. PK 36; Tr. 180–181; Fdg. 39, R. 33). In March of that year, petitioner wrote a letter to Judge Neelen criticizing him for freeing disturbers at a Bund meeting (Tr. 108; Ex. PK 43, 60; Tr. 185–188; Fdg. 39, R.

33). In April 1938, when the Turnverein criticized the Bund for spreading doctrines of racial hatred, intolerance and destruction of civil liberties (Tr. 206–207), petitioner, in the name of the Alliance, attacked that statement as "a declaration of war directed not only against the Bund as such, but against all Americans who are loyal to the country of their adoption but show admiratio and respect to their native country" (Tr. 200–203; Fdg. 40, R. 33–34). In December 1939, when Fritz Kuhn, national leader of the Bund, was sentenced for embezzlement, petitioner sent a letter to the presiding judge congratulating him for "having become nationally famous as part of a Jewish conspiracy to crucify Kuhn on stolen evidence" (Tr. 245–246; Fdg. 40, R. 33–34). In 1940, the Alliance defended the owner of the Highland Cafe, where Bund and Alliance meetings were customarily held, and paid his attorney's fees for proceedings to resist revocation of his license (Tr. 267, 270–277; Fdg. 40, R. 33–35).

Petitioner subscribed to the official Bund newspaper, the *Weckruf* (Tr. 352, 359, 364), and received *Facts in Review*, a propaganda magazine issued by the German Library of Information which was indorsed by the Bund (Ex. PK 145, Tr. 257–258; Fdg. 48, R. 38). He held shares in the Grafton Settlement League, the holding company for the Bund camp opened in 1939 (Tr. 381), and owned a cottage at that camp (Tr. 361; Fdg.

42, R. 35). He used Bund slogans at the beginning and close of all his speeches, and at other times (Tr. 235, 237, 242, 347, 512, 548, 640, 679, 684, 712–714, 728–729; Fdg. 42, R. 35). At a Concord Day celebration on October 8, 1939, petitioner remained seated while one verse of the National Anthem was sung but arose and stood in salute when, at his request, *Deutschland Über Alles* was sung (Tr. 639–641).

From 1938 on, petitioner was shown to be high in Bund circles. Mrs. Merton, who acted as secretary to Bund leader Froboese from March 1938, testified that, during the period she worked for Froboese, he and petitioner cooperated closely on Bund matters (Tr. 23–27). Froboese consulted petitioner about articles in the Bund's newspaper, the *Weckruf*, about speeches to be given by Froboese, and about resolutions to be offered at the 1938 Bund Convention calling for a white-Gentile-ruled America (Tr. 27–31; Fdgs. 41, 44, R. 35, 36). A member of the Bund was told by Froboese not to send out any letters "unless Paul [petitioner] or I O. K. it" (Tr. 41). When Froboese left to attend the 1938 Bund convention in New York, he told his secretary to consult petitioner if she had any questions about her work (Tr. 30; Fdg. 41, R. 35). In August 1938, when Froboese was called to the United States Attorney's office for investigation, he immediately telephoned petitioner, and subsequently told him of

the precautions he had taken to send correspondence and documents to German consular officials and to Germany (Tr. 45–48). Letters signed jointly by Froboese and petitioner were sent to Hitler and to Herr Bohle of the Auslands-Institut (Tr. 48–51, 54, 58; Fdg. 54, R. 39). Birthday greetings sent to Hitler by Froboese and petitioner closed with the phrase "In blind obedience I follow you" (Tr. 49–51; Fdg. 56, R. 41). In December 1938, together with Froboese, petitioner made threats against the manager of a radio station which cancelled a contract for a German Radio Hour in which the Horst Wessel song had previously been sung (Tr. 570–576, 590–595; Fdg. 53, R. 39). Petitioner attended closed meetings of the Bund leaders at the Highland Cafe and acted as a virtual legal adviser to them (Tr. 676–677, 678–680, 707–709, 722, 729, 730). In May 1939, at a large dinner of the Bund, petitioner sat with the national leaders (Tr. 676–677). A photograph taken at the dedication of the new Bund camp in May 1939, shows petitioner among a group of prominent Bund leaders with arm upraised in salute (Exs. PK 188–190; Tr. 346–348; see Con. Tr. 459, 462–463). A news photographer who wished to take photographs at the Bund camp in May 1939, was told to see either Froboese or petitioner (Con. Tr. 876, 879). In 1939, petitioner aided Buerk, subsequently indicted for failure to register as an alien agent (Tr. 320–

321), in recruiting skilled workers for Germany to return to work in industries there (Tr. 677–678, 715–717, 725–728; Fdgs. 41, 54, R. 35, 39–40).

In the early part of May 1938, Froboese and petitioner called various persons together for the organization of an American Protective League (Tr. 33–34). About 60 persons attended, and were requested to sign applications for membership (Tr. 35). Only 20 signed until the press was excluded and it was announced that the lists would not be public and would be known only to the petitioner, Froboese and one other. Thereupon 15 more signatures were obtained. (Tr. 36.) Bund and other anti-Semitic literature was offered for sale or distributed (Tr. 37). Petitioner was elected one of the directors; a constitution and by-laws, in the preparation of which petitioner had previously collaborated, were adopted (Tr. 38). Afterward the program of the organization was amended by Froboese and petitioner to include a purpose to exclude Jews from the University of Wisconsin and to confine Jews to residence in one city in each state. Copies of the amended constitution and by-laws were mailed by petitioner and Froboese to Hitler. (Tr. 52–53; Fdg. 54, R. 39.)

In March 1940, petitioner and Froboese tried to organize the Cooperative Organization of Americans of German Descent, commonly known as the Unity Front (Tr. 134, 248, 654–656). At the first

meeting of the proposed organization Froboese made a speech in which he said "we do not have to have the support of public opinion, American opinion. Give me my Germans and I will do the job" (Tr. 657). Petitioner stated that he did not have to add to the remarks of Froboese, and that the Alliance was ready to join (Tr. 658). The proposed Unity Front never materialized as an organization (Tr. 659) and was characterized by the Federation of German American Societies as a "pro-Nazi trick" (Tr. 249; Fdg. 46, R. 37).

In 1938 petitioner told Mrs. Merton that the Bund represented the "Fuehrer's grip on American Democracy" (Tr. 62–63; Fdg. 40, R. 33–34). He cautioned her never to reveal that his organization and the Bund were linked (Tr. 68–69). When questioned as to how he reconciled his sentiments with his American citizenship, he stated that citizenship was "a good thing to hide behind" (Tr. 63; Fdg. 58, R. 41).

The detailed findings of the district judge are summed up in his last two findings as follows (R. 41–42):

> 60. The attachment of the defendant Knauer in the year 1931 to the aims and objects of Hitler's National Socialist movement, his allegiance and attachment to the Third Reich as manifested by his statements and his frequent use of the Nazi salute in public, his devotion to and promo-

tion of the display of the swastika flag and ceremonies using it in symbolic pledge of fidelity to the Reich, his fierce concern over the good name and honor of the German race, his bitter and acrimonious denunciation of everything which interfered with or stood in the way of the fortunes of the German Reich, his belief in and advocacy of the German racial concept of duty and obligation of all Germans to the fatherland regardless of citizenship, his belief in an attachment to the principles and concepts of National Socialism, his espousal of the aims and objects of the German-American Bund and his active participation therein for the promotion of its aims and objects, his promotion and domination of the German-American Citizens Alliance to further the aims and objects of the Bund, his uninterrupted effort by word and deed to politically activate our German-American people in the interests of the German Reich, his persistent efforts among German-Americans, by means of charitable programs, speeches and movie films, to revive in them a feeling of fidelity and loyalty to the German Reich, the assistance he rendered to the consular representatives of the Reich in the attainment of matters advancing German interests, his fervent devotion and blind attachment to the Fuehrer at a time when the German Reich was hostile to the United States, his lack of affection for or devotion to the United States, his cynical evaluation

of his own American citizenship, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant at the time he filed his petition for naturalization did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, and at the time of his naturalization and at all times thereafter the defendant did not in fact renounce and abjure all allegiance and fidelity to the German Reich, but intended to retain and did retain allegiance and fidelity to the German government.

61. Defendant's belief in and adherence to the concepts of National Socialism as practiced by the Nazi Party in Germany and the German-American Bund in the United States, his activities in promoting the establishment of these concepts in the United States, his opposition to the constitutional principle of political and racial equality of all persons under law regardless of race and color, as evidenced by his campaign of race defilement particularly against the Jews, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant Knauer at the time of his filing his petition for naturalization, at the time of his naturalization, and at all times thereafter was not in fact attached to the principles of the Constitution of the United States and did not intend to support the same.

The district judge accordingly concluded that petitioner's certificate of naturalization was "fraudulently and therefore illegally procured" (R. 43). On appeal, the judgment of the district court cancelling petitioner's certificate of naturalization (R. 44) was affirmed. Judge Minton, speaking for a unanimous court, said (R. 94):

> Notwithstanding all of his work and activities on behalf of the Bund, the Alliance, and the Nazi party of Adolf Hitler and Germany in general, the record reveals no single act of loyalty to the United States on the defendant's part. The evidence is too clear that his heart was not in America except as he could use America to further the purposes of the Nazis in Germany. The trial court in his findings pointed out more in detail than we have the various activities of the defendant in the interest of Germany. We find all of the trial court's findings clearly, substantially, and unequivocally supported by the record. How any fair minded, conscientious judge could have heard and considered the evidence in this record and reached any other conclusion than Judge Duffy reached is beyond us to understand.
>
> This case in all its aspects has no resemblance to the case of *Baumgartner* v. *United States,* [322 U. S. 665]. In that case the defendant had given only lip service to his belief in the Nazi theory that all things

German were superior. He was not shown to be, as this defendant clearly was, an ardent Nazi and obedient follower of Adolf Hitler, and a tireless worker in "his master's vineyard."

SUMMARY OF ARGUMENT

I

The evidence in this case establishes beyond a troubling doubt that petitioner committed conscious and deliberate fraud in 1937 when he took an oath to renounce fealty to the German Reich and to bear true faith and allegiance to the United States. An oath of allegiance looks to the future. The essence of the complaint against petitioner was that he made a promise to the United States intending at the time not to carry it out. On that issue conduct immediately following the making of the promise is at least as probative, if not more so, than prior conduct. Consequently, in determining the state of petitioner's mind when he took the oath, the courts below properly considered evidence of petitioner's statements and conduct both prior to and immediately subsequent to naturalization. Congress itself recognized the propriety of considering conduct subsequent to naturalization when it provided that permanent residence outside the United States within five years after naturalization should be *prima facie* evidence of fraud in the representation of intention to reside in this country, a pre-

sumption whose validity was upheld by this Court. *Luria* v. *United States*, 231 U. S. 9.

Petitioner's whole course of action, prior to, at the time of, and immediately subsequent to naturalization establishes that he never intended to and never did renounce allegiance to the Reich. His expressed pro-Nazi sympathies, his enrollment of his daughter in the Youth Movement of the Bund, his attendance at Bund meetings, his support of the Bund program of seeking recognition of the swastika flag by the Federation of German-American Societies, all mark him with the Nazi stamp prior to his naturalization. He was an educated man, who fully understood the principles of German National Socialism, and who was fully aware of their utter incompatibility with the principles of American democracy. Shortly before naturalization, while his petition was pending, he became a leading member of the German-American Citizens Alliance, a Nazi front organization which was designed to entice Americans of German descent into the Nazi cause by indirection. Petitioner continued these organizational activities immediately after his naturalization and worked closely with the leader of the local unit of the Bund. He became a leading although undercover member of the Bund, directing its activities and advising on its policies. He was thus shown knowingly to have embraced Nazi ideology and to have sought actively to further it by organizing

the German-American group in its support. Both before and after naturalization he worked in close association with German consular representatives in this country. His whole course of conduct bespeaks not only a knowing acceptance of the doctrine of the overriding loyalty of German blood regardless of citizenship which was a fundamental and integral part of National Socialist ideology, but also a cunning and calculated attempt to further that philosophy by organized activity. At the same time, the record is utterly bare of a single statement on his part evidencing any concern for the United States as such. The evidence justifies and indeed compels the conclusion that petitioner consciously used his American citizenship, as he himself admitted, as "a good thing to hide behind", and establishes that his oath of allegiance was perjuriously false. This case is strong in every aspect in which *Baumgartner* v. *United States*, 322 U. S. 665, was weak.

II

Since transfer of allegiance is the very essence of naturalization, fraud in the oath of allegiance is a proper ground for cancellation of a certificate of naturalization. The judgment of naturalization cannot be *res judicata* on this issue, since it is not and cannot be a matter litigated in the proceeding. The oath is taken only after an applicant has been found to have met the other

statutory requirements, and at that time no further evidence is heard. The lack of a *bona fide* intention to transfer allegiance wholly and unequivocally renders the entire naturalization proceeding a fraudulent imposition on the court and on the United States.

Courts of equity have always had power to devitalize judgments founded on such basic fraud. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238. The power to devitalize judgments of naturalization founded on fraud has been specifically conferred by statute. The legislative history of the statutory provision makes it clear that Congress intended to reach any case where citizenship was granted to a person not entitled thereto, including a case where the judgment of naturalization was tainted with intrinsic fraud. There is no constitutional distinction between extrinsic and intrinsic fraud. Since unquestionably a person who did not in good faith intend to renounce fealty to his former sovereign and give whole-hearted allegiance to the United States would not have been eligible for citizenship, proof of such lack of good faith is a proper ground for cancellation of his certificate. This Court has so held as to fraud in the representation of intention to reside permanently in the United States after naturalization. *Luria* v. *United States*, 231 U. S. 9. Since allegiance is certainly as important as

permanent residence, that decision is controlling on the present issue.

Petitioner's other arguments as to *res judicata*, estoppel, and lack of power to cancel certificates of naturalization fraudulently or illegally procured, have all been made in and rejected by this Court before, not only when naturalization was an *ex parte* proceeding, but also after the United States had obtained a right to appear in the original proceeding and after that proceeding had been authoritatively determined to be appealable. Petitioner's basic contention is, in substance, that fraud once successfully perpetrated creates a conclusive estoppel against the defrauded party.

III

Apart from fraud in the oath of allegiance, cancellation of petitioner's certificate of naturalization was proper on the additional ground that, on clear and convincing evidence, it was shown beyond a troubling doubt that petitioner was never attached to the principles of the Constitution of the United States, and that his representation to the contrary was consciously false. The present record shows that he was attached to the principles of National Socialism and of the German-American Bund—to the leadership principle, to totalitarianism, to the principle of the racial unity of all Germans and their superiority over all other races. These are principles funda-

mentally antagonistic to those of our Constitution.

The requirement that an alien, in order to be eligible for citizenship, must be attached to the principles of the Constitution of the United States, dates from 1795. Recently some of the lower federal courts, in supposed reliance on *Schneiderman* v. *United States*, 320 U. S. 118, have in effect eliminated that requirement, and have held that the applicant is sufficiently attached if he is merely law-abiding. But that analogizes the applicant for citizenship to the alien who simply sojourns here temporarily; the latter is also required to be law-abiding, and owes a temporary allegiance to the United States so substantial that for breach thereof he may be guilty of treason.

The debates in the 3d Congress, where the requirement of attachment was first adopted, show that more was demanded of an alien seeking American citizenship than a mere promise to live peacefully in the United States while reserving private judgment that some other form of government was preferable. And the history of the times confirms the fact that those who introduced the phrase, "attached to the principles of the Constitution of the United States", regarded it as having more affirmative content than an attachment simply to free speech and the process of orderly amendment. They had won a long war for independence and erected a new form of

government; their "principles" had a wider scope than simply peaceful change.

We believe that the basic principles of the Constitution are (a) a republican form of government; (b) federalism; (c) a bill of rights for protection of the individual; and (d) an amending process for effecting changes in the organization of the government. Testing petitioner's views by that yardstick, it is clear that his attachment to the principles of leadership, of totalitarianism, and of racial unity and superiority shows that he espoused theories fundamentally at variance with those of the Constitution.

There is no need here to consider whether the test is subjective or objective, for the evidence shows that petitioner did not behave as a man attached to the principles of the Constitution. He could not meet even the test of behavior. Nor are we required to consider, in view of the 1929 amendment to the naturalization laws, whether it was sufficient for petitioner to satisfy the naturalization judge that his behavior met the required standard; when petitioner was naturalized, the statute required actual behavior as a man attached, not simply satisfying the court as to his behavior.

Petitioner's representation that he was attached to the principles of the Constitution of the United States was false, and consequently cancellation of the certificate of naturalization obtained on the

strength of that representation was proper. Attachment is the most important requirement of naturalization next to allegiance, for even a mere alien sojourner is required to bear a temporary allegiance.

IV

The Constitution and laws of the United States discriminate in favor of the person who acquires his American citizenship by birth over the person who seeks to acquire American citizenship by naturalization; this is so as to racial categories, ability to speak English, and attachment to the principles of the Constitution. Asiatics born in the United States are American citizens, but Asiatics born elsewhere are ineligible for citizenship and where they have been naturalized their certificates of naturalization are subject to cancellation.

Even an alien properly naturalized does not stand on a basis of equality with a native-born citizen in respect of eligibility to the Presidency or to membership in Congress, or in respect of freedom to reside permanently outside the United States. The naturalized citizen is subject to expatriation if he resides permanently abroad, under treaty and statutory provisions whose constitutionality has never been questioned. *Perkins* v. *Elg*, 307 U. S. 325, 329; *Luria* v. *United States*, 231 U. S. 9. The true basis for cancelling the naturalized expatriate's citizenship is that he re-

ceived it on condition that he would reside permanently in the United States.

Similarly, Congress has imposed conditions of belief as a prerequisite to entry into the country, to remaining in the country, and to admission into citizenship. Polygamists, anarchists, and persons believing in the forcible overthrow of government are excluded from the United States. The latter two groups (and polygamists prior to 1940) were excluded from citizenship. In like manner, a professed monarchist, being one not attached to the principles of our Constitution, is ineligible for citizenship.

It is essential to distinguish, in this connection, between the constitutional freedom of expression, which is limited only by the clear and present danger test, and the right of Congress to limit the acquisition of citizenship to those whose beliefs are such that they can unhesitatingly join in that common understanding which is a prerequisite to the successful functioning of a democracy. An alien monarchist or an alien fascist is not being denied freedom of speech because Congress insists that he be a convinced republican as a condition to obtaining American citizenship, or because the native-born citizen is not required to prove attachment to the principles of the Constitution as a condition to retaining American citizenship.

Consequently when the conduct of a naturalized citizen subsequent to his naturalization is made

the subject of judicial examination, he is not being put into a strait-jacket; it is simply that inquiry is made whether his citizenship was honestly acquired. This is equally the case whether the conduct subsequent to naturalization involves taking up permanent residence abroad, or systematic agitation short of violence in favor of monarchical government unfettered by the restraints of a bill of rights, or, where citizenship has been conferred because of military service, whether the military service after naturalization has terminated with a dishonorable discharge. In such cases, Congress and the courts do not deny the naturalized citizen either freedom of speech or freedom of movement; but they do deny him the fruits of his fraud or misconduct.

It does not follow that a decree of naturalization in such instances is neither citizenship nor adjudication, any more than it could be contended that the decree holding a patent valid and infringed which this Court set aside for fraud in *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, was neither a patent for invention nor an adjudication of its validity. The public interest is not harmed as much by an outstanding patent fraudulently obtained as by permitting a person opposed to the principles of the Constitution to continue to hide behind his fraudulently obtained citizenship. There is no constitutional difference between setting aside a patent for invention for

extrinsic fraud and setting aside a certificate of naturalization for intrinsic fraud; there is no constitutional compulsion requiring this Court to place a premium on petitioner's up-to-now successfully perpetrated fraud.

V

Expressions in judicial opinions as to freedom for the thought that we hate and the test of truth being the power of the thought to win acceptance in the competition of the market must not be torn from their context and erected into immutable principles. The Founders saw to it that there should be no freedom for one particular hated thought, even if it should triumph in the free competition of ideas; they provided for the guarantee of a republican form of government. The debates in the Convention and the *Federalist* both show that no state was to be allowed to have a monarchy, or any other anti-republican form of government, even if one was desired and was attained through peaceful processes.

Isolated expressions in the writings of Thomas Jefferson are not safe guides on these topics, for a number of reasons; taken literally, they contradict the intentions of the Framers and indicate that it was wrong to preserve the Union by force.

While our traditions and practices indicate that in a free republic there must be the widest scope for free expression, there is nothing in the Con-

stitution which requires "freedom for the thought that we hate" to be erected into such an absolute that the only other constitutional guarantee remaining is the Constitution's guarantee of its own self-destruction.

The present record shows that Hitler after 1923 decided to destroy German democracy by using its processes, and that in Germany the effect of "freedom for the thought that we hate" and of opening up the marketplaces of ideas to "the monstrous and debauching power of the organized lie" was the death-warrant of the German Republic.

There is nothing in the Constitution of the United States that requires us to follow the German example, or that requires us to grant citizenship to the enemies of freedom, or that immunizes fraud on the part of one who took advantage of American freedom in order better to be able to destroy it.

ARGUMENT

I

THE EVIDENCE ESTABLISHES BEYOND A TROUBLING DOUBT THAT IN 1937, WHEN PETITIONER RENOUNCED ALLEGIANCE TO THE GERMAN REICH AND TOOK AN OATH OF ALLEGIANCE TO THE UNITED STATES, HE COMMITTED CONSCIOUS AND DELIBERATE FRAUD

We submit that the evidence in this case establishes beyond a troubling doubt that, in 1936, when

petitioner swore in his petition for naturalization that he intended absolutely and forever to renounce all fealty to the German Reich, and in 1937, at the time of his naturalization, when he took an oath of unqualified allegiance to the United States, he committed conscious and deliberate fraud. Petitioner's whole course of conduct prior to, at the time of, and immediately subsequent to naturalization establishes that he never intended to and never did renounce allegiance to the Hitler Reich and that, if he gave allegiance to the United States at all, it was with the reservation that such allegiance would not conflict with, and thus would be secondary to, his paramount loyalty to Germany.

1. In April 1937, when petitioner was naturalized, Hitler had been in power four years. The blood purge of 1934, the program of military rearmament instituted in 1935, the occupation of the Rhineland in 1936 in violation of solemn treaty provisions, had already occurred. The antidemocratic character of the Nazi Government, its racial policies, its militarism, its emphasis on the national unity of all Germans regardless of their citizenship, were matters of common knowledge, the constant subject of comment in the American press. Petitioner had been to Germany in 1934 during the time of the purge. While there, he had been in touch with German officials

and had been offered a government post. He also admittedly had read Mein Kampf. After this 1934 visit he was shown to have been actively interested in German internal affairs and to have opposed any criticism of the then German Government from any source (see *supra*, p. 6). There can thus be no doubt that petitioner, an educated and articulate man, was well aware of the basic concepts of Nazi philosophy, including the principles of totalitarianism, racial superiority and German unity. Compare Fdg. 57, R. 41; Fdgs. 11, 12, 14, 16, R. 23–25.

It is equally evident that petitioner espoused these principles and actively sought to further them prior to this naturalization. His pro-Nazi sympathies were manifested in his strong reactions to any criticism of the Nazi regime and were well known to his friends, even to the witness who appeared for him in his naturalization proceedings (see *supra*, pp. 5–6, 8). Petitioner's aid to the German Winter Relief Fund during the winter of 1934–1935, after he had visited Germany and observed conditions there, is further evidence of his enlistment in the Nazi cause. His action in enrolling his ten-year old daughter in the Youth Movement of the Bund in 1936, particularly when considered in relation to the fact that he had observed and admired the Nazi Youth Movement in Germany, is strong evidence that he wished to

encourage the development of the Nazi ideology here.

Petitioner's persistent efforts to secure recognition of the swastika flag by the Federation of German American Societies must be evaluated in relation to the evidence that this represented a fixed policy of the German-American Bund, which, like its Nazi party counterpart in Germany, recognized from the start the value of symbols and ritual in developing loyalty to Germany.[11] In the United States, too, as this Court has had occasion to recognize, the flag has a transcendent

[11] Cf. Hitler, *Mein Kampf*, translated by Manheim (Houghton Mifflin, 1943), p. 492:

"The organization of our monitor troop clarified a very important question. Up till then the movement possessed no party insignia and no party flag. The absence of such symbols not only had momentary disadvantages, but was intolerable for the future. The disadvantages consisted above all in the fact that the party comrades lacked outward sign of their common bond, while it was unbearable for the future to dispense with a sign which possessed the character of a symbol of the movement and could as such be opposed to the International.

"What importance must be attributed to such a symbol from the psychological point of view I had even in my youth more than one occasion to recognize and also emotionally to understand. Then, after the War, I experienced a mass demonstration of the Marxists in front of the Royal Palace and the Lustgarten. A sea of red flags, red scarves, and red flowers gave to this demonstration, in which an estimated hundred and twenty thousand persons took part, an aspect that was gigantic from the purely external point of view. I myself could feel and understand how easily the man of the people succumbs to the suggestive magic of a spectacle so grandiose in effect."

symbolic value. *Halter* v. *Nebraska*, 205 U. S. 34, 43.[12] The acrimony which the flag question engendered in Milwaukee makes it clear that both sides to the controversy regarded it as involving fundamental issues of loyalty, and that petitioner, by his actions in this matter, showed clearly where his own loyalty lay.

Finally, just before naturalization, we find petitioner actively participating in the development of the German-American Citizens Alliance, a group which was clearly shown to have been known by petitioner to be a Nazi "front" organization, designed to gather into the Nazi camp by indirection German-Americans who for one reason or another felt it impolitic to be overtly connected with the already notorious Bund. Petitioner was not merely a member of the Al-

[12] "* * * the flag is the symbol of the Nation's power, the emblem of freedom in its truest, best sense * * * it signifies government resting on the consent of the governed; liberty regulated by law; the protection of the weak against the strong; security against the exercise of arbitrary power; and absolute safety for free institutions against foreign aggression."

Compare Holmes, *John Marshall* (1901), in *Collected Legal Papers* (1920) 266, 270–271:

"We live by symbols, and what shall be symbolized by any image of the sight depends upon the mind of him who sees it. * * * It is all a symbol, if you like, but so is the flag. The flag is but a bit of bunting to one who insists on prose. Yet, thanks to Marshall and to the men of his generation—and for this above all we celebrate him and them—its red is our lifeblood, its stars our world, its blue our heaven. It owns our land. At will it throws away our lives."

liance, but was on its executive committee, and was from the start the most active director of its policies.

On this evidence alone, all relating to petitioner's activities prior to naturalization, we think that the courts below could properly have found that petitioner consciously embraced Nazi ideology at the time he was naturalized, and that he was fully aware that such concepts were incompatible with the principles of the American Constitution and with allegiance to the United States.

2. The trial court was not, however, limited to a consideration of such evidence alone. Petitioner's contention (Br. 42–50) that the testimony in respect of his activities after naturalization was incompetent, is based on a misconception of the decisions of this court in *Schneiderman* v. *United States*, 320 U. S. 118, and *Baumgartner* v. *United States*, 322 U. S. 665. The *Schneiderman* case dealt with the question whether the defendant had, during the five-year period preceding naturalization, behaved as a person attached to the principles of the Constitution; this Court there said that petitioner's subsequent activities threw little light on the manner in which he had behaved during the period in question. Here the issue is not only petitioner's behavior prior to his naturalization, but the good faith of his oath of allegiance, of his promise in the future to act as a loyal American citizen. In essence the charge is that

petitioner made that promise with the present intention not to carry it out, a well-established species of fraud.

On such an issue there is no rule of law absolutely excluding all evidence of conduct after naturalization. If, for example, there were evidence showing that an alien, within a month before naturalization, wrote his wife that "in a war I belong in my homeland", "THERE is my place", "if I now become a citizen * * * by no means does it mean the break with my homeland and my nation", there could be no doubt whatever that the oath of allegiance had been fraudulently taken. On those precise facts, the Second Circuit held that the certificate of naturalization was fraudulently obtained and was properly cancelled by suit. *United States* v. *Siegel*, 152 F. 2d 614, petition for certiorari pending, No. 873, this Term. We submit that no different result could have been reached if the same letter had been written on the day after naturalization, or one month after naturalization, or even a year after naturalization. It is all a matter of proof, of the quantum of evidence necessary to establish beyond a present doubt that, when the alien took the oath of allegiance, he did not then intend in good faith to transfer his whole loyalty from the country of his origin to the country of his adoption. Obviously, in determining the mental state with which a promise looking to the future is made, conduct

immediately following the promise is at least as probative, if not actually more so, than conduct just prior to the promise.

Congress itself so recognized when it provided in Section 15 of the 1906 Act, 34 Stat. 596, 601, that permanent residence in a foreign country within five years subsequent to naturalization should be *prima facie* evidence of fraud in the representation of intention to become a permanent citizen. The reasonableness of that presumption was upheld by this Court in *Luria* v. *United States*, 231 U. S. 9. By the same reasoning, conduct immediately following naturalization is, logically and legally, evidence probative on the issue of the good faith with which the promise of future allegiance is given. An alien could be an active supporter of his country of origin up to the time of his naturalization, but if thereafter by speech and conduct he showed unquestioned loyalty to the United States, such subsequent conduct would be strong evidence that the transfer of the allegiance to the United States had been honestly made. On the other hand, an alien could designedly behave with circumspect discretion up to the time of his naturalization, but if shortly thereafter he committed espionage on behalf of his native country, it could not reasonably be argued that such action had no tendency to prove lack of good faith in taking the oath of allegiance. Where, as in the *Baumgartner* case, there is a long lapse of time

between the date of naturalization and the significant proof of later disloyalty, the probative value of subsequent conduct becomes weakened, particularly where, as in that case, an intervening event, such as Hitler's accession to power, might account for a change of heart. That, however, is not the situation here. In this case the evidence of subsequent conduct relates to activities immediately subsequent to the taking of the oath which were part of a continuous course of conduct begun prior to naturalization. As such, it had strong probative value on the issue of petitioner's good faith in renouncing for the future his loyalty to the Reich and in promising allegiance to the United States.

3. Petitioner's actions immediately after naturalization conclusively prove that he never intended to and never did renounce allegiance to Germany. A few months after his naturalization he was sponsoring a solstice ceremony designed to symbolize the unity of the German people everywhere, and was stressing in speeches the Nazi concept of the German *Volkstum*, of German racial unity (see *supra*, pp. 13, 14–15). His entire activity from 1937 on, as the dominant member of the German American Citizens Alliance, was focused in support of the Nazi Government and its American spokesmen; the German-American Bund. Since petitioner was designedly acting as a "front," his declarations were by and

large couched in terms of those "who are loyal to the country of their adoption but show admiration and respect to their native country" (*supra*, p. 18). But to hold that this evidences loyalty to the United States is to disregard substance for form. For example, the particular statement quoted above must be considered in the light of the fact that it was made in response to a criticism of racial hatred, intolerance and destruction of civil liberties. Similar statements by petitioner were all directed against any declaration recognizing the basic conflict between American ideas and Nazi ideology.

It is extremely significant, we believe, that petitioner's numerous public expressions were primarily directed, not at achieving equality of treatment as between native-born Americans and Americans of German birth, but at answering, discrediting, and ultimately stifling any and all criticism of the National Socialist regime in Germany. Nor were these merely casual opinions. The fact of the matter is that petitioner was acting on behalf of an organization which was deliberately seeking to entice all American citizens of German descent into support of the Nazi cause. It is only necessary to recall the history of Austria and Czechoslovakia in the years from 1937 to 1939 to recognize that peaceful infiltration and apparently innocent organizations were the methods of Nazi penetration, and it is certainly significant here that the Bund newspaper

reprinted with obvious pride an article from a Swiss journal which likened Fritz Kuhn, the leader of the German-American Bund, to Henlein, the notorious head of the Sudeten Germans, whose activities led to Munich and the dismemberment of Czechoslovakia.[13] The plan was organization first, and action later. It is not so much what petitioner said as what he was obviously trying to accomplish that shows his fraud upon the naturalization court. No one letter, no one public statement by petitioner on his own behalf or on behalf of the Alliance may in itself be conclusive evidence of his disloyalty, but the entire pattern of his actions and speeches in the years from 1937 to 1939 bespeaks an overriding loyalty to Hitler and Germany which is wholly incompatible with any renunciation of allegiance to that country in good faith in April 1937.

The course of conduct pursued by petitioner would have been both impossible and incomprehensible in a German who foresworg past political allegiance without reservation, retaining the cultural feelings imbedded in childhood and youth; but it fits without a single aspect of inconsistency the pattern of a German who, following his Fuehrer in blind obedience, finds American citizenship a good thing to hide behind. Petitioner's

[13] Page 130 of Pl. Ex. 17; Con. Tr. 233. The *Deutscher Weckruf und Beobachter* for August 31, 1939, prints a Swiss article headlined "Fritz Kuhn, the Henlein of America."

conduct was never that of an American citizen who retained a cultural and sentimental affection for the land of his birth; it was, however, at all times, that of a German, a loyal, devout, even fanatical National Socialist German, who regarded his certificate of naturalization as a convenient camouflage, behind the cover of which he could more easily pursue activities which would inure to the benefit of, and only of, his native Fatherland.

4. That petitioner was deliberately and consciously furthering the Nazi cause in the period immediately following his naturalization is, we think, conclusively established by the evidence of his relations with the German-American Bund. By March of 1938, within a year of his naturalization, petitioner was shown to have been a leading although under-cover member of the Bund, directing its activities, and advising on its policies. In that year he was shown to have been in active correspondence with officials of the German Government and to have kept them informed as to his activities, including the proposed organization of the German-American Protective League (see *supra*, pp. 19–21). The testimony of Mrs. Merton as to petitioner's close association with the mid-western *Gauleiter*, Froboese, is corroborated by the testimony of those who observed Bund meetings in the Highland Cafe, and the testimony of the managers of the radio station who were

threatened by petitioner and Froboese in December of that year.[14] It is confirmed as to the year

[14] In view of the importance of Mrs. Merton's testimony, and the efforts made by petitioner at the trial (Tr. 65–71, 739–756, 904–906, 939–1045), in the court below (see R. 94–95), and here (Pet. Br. 20), to impeach her testimony and to attack her credibility, we set out the detailed evidence corroborating her.

Mrs. Merton, who had acted as Froboese's secretary, testified at length as to petitioner's close connection with Froboese, and as to his disloyal attitude towards the United States (*supra*, pp. 19, 22). We have pointed out in the text the other testimony establishing petitioner's close relationship with Froboese in 1938 and 1939.

Petitioner asserted, when he took the stand, that he had never seen Mrs. Merton (Tr. 904–906), attempted to impeach her testimony by showing that there were some errors in German sentences she had written and typed in court at his dictation (Tr. 755–757, 996–1006), and offered the testimony of Mrs. Froboese that she had never seen Mrs. Merton (Tr. 989) and that she had never seen petitioner at Froboese's house (Tr. 990). Mrs. Merton's original testimony had been that Froboese had said that a wife should not know her husband's business (Tr. 763), and that in consequence she had see Mrs. Froboese only once (Tr. 71, 763).

In corroboration of Mrs. Merton, it was shown that Mrs. Froboese had told an F. B. I. investigator in January 1942 that a Miss Merton or Myrtle had been her husband's stenographer in the past (Tr. 1033, 1035). Inspector Schranz of the Milwaukee Police Department testified that in 1938 Mrs. Merton had informed him she was working as Froboese's secretary and had made reports regularly to the Police Department (Tr. 1028–1030). A police sergeant in the Inspector's office testified from notes that, in September 1938, he drove Mrs. Merton to the vicinity of Froboese's home and saw her enter the house (Tr. 1042–1044, 1045). Moreover, Judge Steinle, who was called by petitioner as a witness, testified that in 1938 Mrs. Merton had told him that she was investigating subversive activities on the part of

1939 by the casual remark of a photographer that, when he wished to take pictures, at the Bund camp, he was told to see either Froboese or petitioner (*supra*, p. 20). It is an inescapable inference that petitioner did not become a leading voice in Bund councils early in 1938 without proof of his loyalty to the Nazi cause at least in 1937, the year of his naturalization.

When, therefore, he defended the Bund, when he wrote on August 11, 1937, that "this organization is rendering a valuable service to the U. S. A." and that "the Bund is teaching respect for the American Constitution and flag" (Ex. PK

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people who were friendly to the Nazi cause (Tr. 944), and that her reputation for truth and veracity was very good (Tr. 946).

The trial judge subjected Mrs. Merton to a searching cross-examination (Tr. 758–766), and assisted petitioner in the latter's attempt to impeach her testimony. He allowed petitioner to call Mrs. Merton as his own witness for the purpose of subjecting her to further cross-examination (Tr. 739), arranged, after the close of the evidence in the case, to have Mrs. Froboese produced from the camp where she was interned (Tr. 939), and, at the additional hearing, allowed petitioner to produce other witnesses in addition to Mrs. Froboese in an attempt to discredit Mrs. Merton (Tr. 939, 943, 996, 1002, 1007, 1009, 1013, 1015, 1024).

The circumstance that, at the close of the whole case, the district judge's findings follow the testimony of Mrs. Merton (*e. g.*, Fdgs. 41, 54, 56, 58; R. 35, 39, 41), indicate clearly that after observing her demeanor and those of the other witnesses, and noting that petitioner's denials on other points also ran counter to the weight of the evidence (*infra*, p. 53), the district judge concluded that she was telling the truth. The circuit court of appeals came to the same conclusion, stating (R. 95) that "Mrs. Merton's testimony was wholly credible and corroborated in many respects."

23; Tr. 174, 175), when he attacked the judge who had sentenced Bund leader Fritz Kuhn to jail in 1939 (*supra*, p. 18), when, during the entire period from 1936 to 1940 he kept his daughter enrolled in the Youth Movement of the Bund (*supra*, p. 8), his acts were those of a man who was fully familiar with all of the tenets of that organization. Whether the part he thus played as a leading supporter of the Bund in Wisconsin involved actual enrolled and recorded Bund membership or whether he eschewed this final act, preferring as more effective his front activities in the name and behind the facade of the German American Citizens Alliance, is unimportant.[15] The significant fact is that those who were actively and openly furthering Nazi doctrines in this Country were well aware that, prior to 1938, petitioner had knowingly aligned himself with their cause, and that he was, as he himself had stated, a loyal follower of Adolf Hitler "in blind obedience."

5. Moreover, much of petitioner's conduct reflected by the present record without substantial contradiction involves activities that go far beyond even active, participating membership in an organization "for the systematic agitation of Nazi

[15] It is significant in this connection that the district judge concluded that (R. 27), "The fact that a person was a member of a local unit of the Bund is not in itself sufficient to prove fraud which would warrant a judgment of cancellation of a decree of naturalization."

views." *Baumgartner* v. *United States*, 322 U. S. 665, 677. In a good many activities he worked directly with German consular representatives in this country.

We have shown above, *supra*, pp. 5–7, petitioner's pre-1937 connection with German consulates in connection with the distribution of Nazi propaganda films and the collection of money, ostensibly for German winter relief but actually to increase the Nazi Government's supply of foreign currency. The circumstance that petitioner was naturalized in 1937 made no difference to one who regarded citizenship as a good thing to hide behind, and in the years that followed he continued to act in close cooperation with German consulates in furtherance of the interests of Nazi Germany.

In 1938, he acted as go-between and representative of the Consul in the Beutler matter. Dr. Beutler was a refugee from Germany whose real property there had been sequestered by the Nazis. He desired to exchange it for real property in the United States, by way of salvaging some of its value, and ascertained that such transfers were to be effectuated through the German Consulate. Petitioner, as agent for the Consul, drafted the necessary letter, and charged a fee of $7 for his work. The transaction was not consummated, but petitioner kept the money (Tr. 693–705; Ex. PK 207–209).

In 1939 petitioner assisted one Buerk, together with a consular representative, in recruiting skilled labor for work in Germany. Though petitioner denied any such activity (Tr. 366), the evidence against him on this point was overwhelming (Tr. 677–678, 714–717, 724–728) and the district court found as a fact, as it was compelled by the weight of the testimony to do, that petitioner participated in this recruiting (Fdg. 54, R. 40). The finding itself summarizes the evidence with considerable particularity. Buerk was subsequently indicted for failure to register as a foreign agent, and while in confinement had the solace of a visit from petitioner (Tr. 321, 322, 732–733); in due course, Buerk was released without trial, apparently in exchange for an American held by the Nazis (Tr. 325, 734–736), and returned to Germany in 1941 with the German consular officials after the closing of the German consulates (Tr. 323, 734–736). Petitioner attended the farewell party given for Buerk (Tr. 324).

Other activities on petitioner's part emphasize that his true allegiance lay with Germany and not with the country whose citizenship he found it convenient to hide behind. His enthusiasm for the solstice ceremony, designed to symbolize the blood unity of Germans everywhere regardless of nationality (*supra*, p. 13), his correspondence with Herr Bohle of the German Auslands-Institut in

Stuttgart, an official Nazi organization whose entire activity involved fostering the same idea, his statement that "with the rise and the fall of the German nation we rise and fall" (*supra*, pp. 15, 20), his consistent defense of the Nazi regime in Germany against all attacks, particularly against attacks originating in German-American groups, and his expressed willingness to follow Adolf Hitler "in blind obedience", all emphasize that his allegiance remained with Germany, and that his oath purporting to foreswear that allegiance and thereafter to bear true faith and allegiance to the United States was, and was known by him to be, false and perjurious.

6. In evaluating petitioner's conduct, both prior and subsequent to naturalization, we think it essential to bear in mind that the aggressive German nationalism expounded by the Nazi ideology involved a concept of a racial citizenship, a fellowship of German blood which persisted despite outward changes in nationality (Con. Tr. 141, 145–146, 278, 355, 438–439, 450–451, 618–623). The Nazi doctrine of "Ein Volk, Ein Reich, Ein Fuehrer"—"One People, One Realm, One Leader"—necessarily required a paramount and overriding allegiance to the German nation as such which is irreconcilable with renunciation in good faith of allegiance to one's country of origin, and with whole-hearted and indivisible allegiance to the United States. In some instances, of course, there may well be a question whether a particular

applicant for citizenship is aware of that conflict at the time of naturalization. But where, as in the instant case, it is clear that the applicant has consciously, knowingly, and willingly embraced the Nazi doctrine of a transcendent blood loyalty among Germans regardless of their nationality—"Blood is Sacred" (Pl. Ex. 56, Con. Tr. 448)—and has sought, by every means within his power, to foster and implement it through personal and organizational activities, then the oath of allegiance to the United States is consciously false.

That conscious falsity has been established here, we submit, by clear, unequivocal, and convincing evidence. Here the evidence proves beyond possibility of troubling doubt that petitioner, before naturalization, knowingly espoused Nazi principles and doctrines, and sought by words and action to propagate and further them; and that, far from desisting after his naturalization in 1937, he became even more outspoken in his views and even more vigorous in his organized activities in behalf of Germany. Everything he did favored and furthered the cause of Germany; nothing he did favored or furthered the cause of the United States except possibly within a formula that linked the two. The long record in this case is utterly bare of a single act, of a single word, of the expression of a single thought, which evidences an undivided allegiance to the United States, or indeed any concern for the United States unlinked

or unrelated to the welfare of the German Reich. Petitioner's loyalty at all times burned steadfastly—for Germany.

Nor is there here any question of imputing the aims of an organization to some insignificant underling who may have joined under stimulus of loneliness or under the impetus of social pressure, without a full awareness of the full implications of his membership. We are not here imputing every sentence of a catch-all political platform to a lowly precinct worker, or to an individual voter. Petitioner dominated the Alliance; petitioner was a leading voice in Bund councils, however well that voice may have been concealed from outside listeners. The evidence establishes beyond any doubt that his was a shrewd and calculated plan to take advantage of American freedom of expression on behalf of the Alliance, and to conceal deliberately his close Bund affiliations in order to advance Bund objectives, and through them Nazi objectives, in the United States. Only when his enthusiasms prevailed at Alliance meetings, where he invariably gave the Nazi salute and used the greeting "Free America!" which the Bund had adopted in 1938, did he openly disclose his membership in as well as his community of interest with and his devotion to the Bund.

The evidence fully supports the finding by the district court (Fdg. 50, R. 38):

> I find as a fact that the defendant was a member of the Milwaukee unit of the Bund; that he was so considered by its officers and members; that most of his interests and activities were in behalf of the Bund; and that, though completely aware of its aims and purposes, he deliberately vigorously promoted the objects of the Bund.

More than that, the evidence establishes, what we have heretofore shown in considerable detail, that most of petitioner's activities were undertaken on behalf of Nazi Germany, and that, though fully aware of the aims and purposes of National Socialism and their utter incompatibility with devotion and allegiance to the United States, he vigorously worked to further the cause of Nazi Germany within the framework of American freedom. The premise underlying petitioner's attitude was articulated with disarming frankness by the Bundist Gissibl (Con. Tr. 198):

> * * * many of us didn't know the Constitution. We knew about the privileges we had under the Bill of Rights and the Constitution, and we surely made plenty use of these privileges, but we didn't know much of the Constitution itself.

We think that the whole evidence justifies the conclusion, not only that petitioner never re-

nounced allegiance to Germany, but that he artfully and intentionally used his American citizenship as "a good thing to hide behind." In the terms of the *Baumgartner* decision, 322 U. S. at page 672, the evidence here establishes not only the "objective falsity" of petitioner's oath of allegiance, but its "perjurious falsity" as well.

7. This case is strong in every aspect in which this Court found the *Baumgartner* case weak. When petitioner was naturalized in 1937, the German Government was that of Hitler, not as in the *Baumgartner* case, that of the Weimar Republic. Moreover, Hitler had been in power long enough for Nazi theories to have been translated into practice and for Nazi principles to have become well known. The evidence here does not consist solely of expressions of opinion long after the event, but of statements immediately prior to, contemporaneous with, and immediately following naturalization. Finally, petitioner did not confine his activities to expressions of opinion alone. He was shown to have been a leading member of both the Bund and the German-American Citizens Alliance, two organizations designedly organized "for the systematic agitation of Nazi views" (see 322 U. S. at page 677). Under these circumstances we submit that the district court and the circuit court of appeals properly considered all the evidence in the case, and were not

only fully justified in finding, but indeed were compelled to find, that such evidence was clear, unequivocal and convincing proof that petitioner committed fraud when he foreswore fealty to Germany and promised allegiance to the United States.[16]

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[16] Petitioner's brief suggests that petitioner was prejudiced because he insisted on acting as his own counsel at the trial (Pet. Br. 50–51). It should be noted, however, that petitioner had studied law in Germany and apparently had acted as legal adviser to the Milwaukee unit of the Bund (see *supra*, pp. 4, 20). His testimony at the trial shows him to be both shrewd and articulate (see Tr. 156–384), and his objections to questions, some of which were sustained by the trial judge, reveal a working knowledge of legal principles (*e. g.*, Tr. 384, 392, 395–396, 397, 398, 403, 484, 512, 523, 536, 546, 550, 589, 612, 655, 992).

Furthermore, the trial judge was very careful to protect petitioner's rights. As previously shown, *supra*, p. 50, note 14, he permitted petitioner to cross-examine Mrs. Merton after calling her as his own witness, and allowed petitioner to call additional witnesses after the case had been closed except for the testimony of Mrs. Froboese. In doing so, the trial judge specifically stated that he was granting petitioner greater leeway than he would have allowed a defendant represented by counsel (Tr. 739, 947, 1019–1020). The trial judge interposed and sustained an objection on petitioner's behalf (Tr. 809), advised petitioner about his own testimony (Tr. 902–905, 910–912), and informed him of the type of question which could be asked concerning Mrs. Merton's reputation for veracity (Tr. 1022–1023). The trial judge himself cross-examined Mrs. Merton at length (Tr. 758–766). It is thus clear that he not only accorded petitioner a trial of exemplary fairness, but, as he stated, granted petitioner special privileges which would not have been allowed a defendant represented by counsel (Tr. 826, 906, 907, 1019).

II

FRAUD IN THE OATH OF ALLEGIANCE IS A PROPER GROUND FOR CANCELLATION OF A CERTIFICATE OF NATURALIZATION

The essence of naturalization is the transfer of allegiance from the country of origin to the country of adoption. For more than 150 years, since the first naturalization act of 1790, an alien admitted to United States citizenship has been required to take a solemn oath in open court that he will support the Constitution of the United States, and since 1795 he has been required to swear that he absolutely renounces allegiance to every foreign power, and particularly the foreign power of which he was formerly a citizen. Act of March 26, 1790, c. 3, 1 Stat. 103; Act of January 29, 1795, c. 20, 1 Stat. 414; Act of April 14, 1802, c. 28, 2 Stat. 153, 154; R. S. 2165; Act of June 29, 1906, c. 3592, 34 Stat. 596, 598; Act of October 14, 1940, c. 876, 54 Stat. 1137, 1157 (8 U. S. C. 735). Unquestionably, if an applicant for citizenship stated that he recognized a paramount loyalty to his country of origin over and above his allegiance to the United States, he would not be eligible for citizenship. Petitioner's position (Br. 16–41) is that, even though an alien may have such a mental reservation which he does not disclose to the court, his certificate of naturalization is thereafter inviolable if he meets the other

statutory requirements and repeats the words of the oath in open court. He argues that the judgment of the naturalization court admitting an applicant to citizenship is a final judgment on his qualifications, including his loyalty, and that fraud in the representation of intention as to allegiance is "intrinsic fraud," litigated in the proceedings for naturalization, which cannot be examined in a subsequent suit.

If petitioner's position were sound, it would mean that for 150 years Congress has laid down as a requirement for citizenship a mumbo-jumbo ritual which has no meaning whatsoever; that, although allegiance is the foundation of citizenship, a representation of intention to be loyal has less significance than the representation of intention to reside in this country after naturalization (*Luria* v. *United States*, 231 U. S. 9); and that good faith in the transfer of allegiance is less important than prior residence in the United States (*Johannessen* v. *United States*, 225 U. S. 227), than the filing of a certificate of arrival (*United States* v. *Ness*, 245 U. S. 319), or than the place where a hearing was had (*United States* v. *Ginsberg*, 243 U. S. 472). The absurdity of such result in itself casts doubt on the arguments offered to support it. An analysis thereof, we submit, shows them to be unsound.

The assumption that the naturalization court, on evidence, makes a finding as to the genuineness

of petitioner's representation that he intends in good faith, for the future, to bear true faith and allegiance to the United States, is an erroneous one. It is unnecessary to consider at this point the extent to which the judgment of naturalization may constitute a final determination of issues of fact as to residence and past behavior, matters which under the statute must be substantiated by the testimony of two witnesses (Appendix, *infra,* p. 115). The oath of allegiance is clearly in a different category. It relates, not to the past, but to the future; not to behavior, but to mental state. Only after an alien has been found to have met the other statutory requirements does he take the oath to renounce his former sovereign and to give full faith and allegiance to the United States. An alien who intends to use citizenship as "a good thing to hide behind" may be careful to behave with discretion for the five-year period preceding naturalization, and thus may properly be found to be a person eligible for citizenship. He does not, however, become a citizen until he takes the oath in open court, and he is not properly a citizen unless he takes that oath in good faith without mental reservation.

No further evidence is heard at the time the oath is taken. There is thus no opportunity for the naturalization examiner or the judge to determine the good faith of the oath, its truth or its falsity. The oath is not the determination of an

issue of fact, but, as petitioner himself admits (Br. 41), is the final act by which an alien enters into his new status as a citizen. Thus, fraud in the oath of allegiance is not, like incidental perjured testimony at the trial, the type of "intrinsic fraud" which cannot be the basis for collateral attack upon the judgment. The doctrine of *United States* v. *Throckmorton*, 98 U. S. 61, upon which petitioner relies (Br. 19–23), is merely that the issue of fraud can become *res judicata* when it has been litigated and adjudicated in the judgment sought to be set aside. As petitioner himself states (Br. 22), fraud is intrinsic when the fraudulent matters were in issue and could have been or were adjudicated. As we have shown, fraud in the oath of allegiance is not a matter which has been or could be tried in the naturalization proceeding.

Furthermore, allegiance is not an incidental issue in naturalization; it is the essential operative element of the entire proceeding. The first act performed by an alien in applying for naturalization is to state in his declaration of intention that it is his bona fide intention to renounce prior loyalties and to become a citizen of the United States; the last act is the taking of the oath in open court. A naturalization proceeding instituted without bona fide intention to become a loyal citizen of the United States is not merely colored

by fraud, it is founded on fraud. The whole proceeding is an imposition upon the court and upon the United States as a nation.

The authority to cancel for such basic fraud is established. Petitioner likens the oath to the marriage vows (Br. 40), but he neglects to consider that one party's fraud in concealing his intention not to carry out his marital obligations is a well-recognized ground for annulment of a marriage. 2 Schouler, *Marriage, Divorce & Domestic Relations* (6th ed.) sec. 1142. Even without the authority of statute, courts of equity have power to devitalize a judgment founded on fraud, a power which this Court has but recently reaffirmed. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, 244–246.

We submit, therefore, that subtle distinctions and "witty diversities" between extrinsic and intrinsic fraud are thus of little relevance here. In any event, whatever may now be the effective difference between extrinsic fraud and intrinsic fraud in proceedings resting solely on judicial power, as to which see *Hazel-Atlas Co.* v. *Hartford Co., supra,* the basis for cancellation of fraudulently obtained certificates of naturalization is statutory, and is broad enough to reach intrinsic fraud.

The language of the statute (*infra,* pp. 113–114) is absolute and unequivocal. The legislative history of the 1906 Act, which first granted statutory

authority for cancellation of certificates of naturalization, shows that perjured testimony, generally considered as "intrinsic fraud," was one of the particular evils which Congress sought to reach. The report of the Committee on Immigration and Naturalization, to which was referred the bill which eventually became the 1906 Act, stated (H. Rep. 1789, 59th Cong., 1st sess., p. 2):

> With the great influx of foreigners who have in recent years come to our shores and who are yearly coming in increasing numbers, and who seek naturalization under our laws, a very loose, unsatisfactory, and careless method of naturalization has grown up, leading to the grossest character of frauds against American citizenship. The conditions that have been revealed by special investigations of the frauds committed against the naturalization laws render wholly unnecessary any argument upon the necessity at this time of fully exercising all the authority in naturalization matters conferred by the Constitution upon Congress.
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> * * * * *
>
> The worst and most glaring frauds have consisted in perjury, false impersonation, and the sale and use of false and counterfeit certificates of naturalization. * * *

The report of the Senate Committee on Immigration repeated this statement *in haec verba*. See S. Rep. 4373, 59th Cong., 1st sess., pp. 1-2. Representative Crumpacker, one of the sponsors of

the legislation, emphasized during the debates that the legislation authorized cancellation where the certificate of citizenship was procured by practicing a fraud on the court (40 Cong. Rec. 7040):

> If any alien shall impose upon the court by perjured testimony, or if a certificate has been issued in violation of law, the bill makes the certificate invalid and authorizes proceedings in any court of competent jurisdiction to cancel the certificate of citizenship * * *. A certificate tainted with fraud is in the sense of the law no certificate at all.

We think it is clear that Congress intended to provide a remedy which would reach all cases where persons who were not entitled to citizenship had received certificates of naturalization, and that it is unimportant whether the certificate was wrongfully obtained by mistake, by perjury, by extrinsic fraud, or by intrinsic fraud. Since, unquestionably, an alien who was unwilling to renounce allegiance to his country of origin and bear true faith and allegiance to the United States would not have been admitted to citizenship if such fact were known to the court at the time of his naturalization, his certificate may be cancelled on proof that he did in fact have such mental reservation. Even if, in the circumstances of the present case, fraud in taking the oath of allegiance can be said to amount to intrinsic fraud only, it is clear that the rule that equity will not set aside

judgments for such fraud is a canon of judicial discretion rather than of power. *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, 244. That rule certainly does not limit the power of Congress to provide for the cancellation of a certificate of naturalization improperly issued. There is no constitutional distinction between intrinsic fraud and extrinsic fraud. As this Court stated in *Johannessen* v. *United States, supra,* 225 U. S. at p. 241:

> * * * An alien has no moral or constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would not have been issued.

In our view, the arguments advanced by petitioner are foreclosed by the decision of this Court in *Luria* v. *United States,* 231 U. S. 9. In that case, a certificate of naturalization was cancelled for fraud on the ground that petitioner had not in good faith intended to become a resident of the United States at the time he was naturalized, although at that time the statute did not require a declaration of intention to become a permanent resident. This Court held that naturalization implied a commitment in good faith to undertake the duties of citizenship; that, if it were shown that an applicant lacked good faith, his certificate of naturalization could be cancelled; and that the

presumption of the 1906 Act, by which permanent residence in a foreign country within five years after naturalization was to be deemed prima facie evidence of lack of intention to reside here, was applicable to a certificate issued before enactment of that statute. The Court said (231 U. S., at 22, 23–24):

> Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other. * * *
>
> These requirements plainly contemplated that the applicant, if admitted, should be a citizen in fact as well as in name—that he should assume and bear the obligations and duties of that status as well as enjoy its rights and privileges. In other words, it was contemplated that his admission should be mutually beneficial to the Government and himself, the proof in respect of his established residence, moral character, and attachment to the principles of the Constitution being exacted because of what they promised for the future, rather than for what they told of the past.
>
> By the clearest implication those laws show that it was not intended that naturalization could be secured thereunder by an alien whose purpose was to escape the duties of his native allegiance without taking upon himself those of citizenship here,

> or by one whose purpose was to reside permanently in a foreign country and to use his naturalization as a shield against the imposition of duties there, while by his absence he was avoiding his duties here. Naturalization secured with such a purpose was wanting in one of its most essential elements—good faith on the part of the applicant. It involved a wrongful use of a beneficent law. * * *

It would thus seem to be settled that the mental state, the good faith, which underlies an application for naturalization, is a jurisdictional matter; that proof of lack of good faith may be based on conduct within a reasonable period subsequent to naturalization; and that, if lack of good faith is established, a certificate of naturalization may be cancelled. Since allegiance is certainly as important as an intention to reside here, lack of good faith in the representation as to future loyalty to the United States is fraud of a fundamental character, which when established is clearly a proper basis for cancellation of a certificate of naturalization.

For the rest, petitioner's arguments as to *res judicata,* estoppel, and lack of power in the courts to cancel have all been made in and rejected by this Court in the past. See appellants' arguments in *Johannessen* v. *United States,* 225 U. S. 227, 228–229, and in *Luria* v. *United States,* 231 U. S. 9, 11–14; see petitioner's argument in *Maney* v.

United States, 278 U. S. 17, 18–19. While, it is true, the certificates involved in the *Johannessen* and *Luria* cases had been issued in *ex parte* proceedings, this Court held in *United States* v. *Ness*, 245 U. S. 319, that the same result properly followed after the United States had been given a statutory right to appear in the original naturalization proceeding. Mr. Justice Brandeis, speaking for a unanimous Court, pointed out that Section 11 of the 1906 Act, providing for an appearance on behalf of the United States in the naturalization proceeding, and Section 15 of the same Act, authorizing cancellation for illegality and fraud, were designed to afford cumulative protection against fraudulent or illegal naturalization. Accordingly, in a suit under Section 15 to set aside a certificate granted without the prior filing of a certificate of arrival, the Court held that the United States was not estopped by the order of naturalization, although it had entered its appearance in the naturalization proceedings pursuant to Section 11 and had there unsuccessfully raised the same objection.

Nor can the *Ness* case be distinguished on the ground that the right of appeal in naturalization cases had not then been recognized. In the very decision which did for the first time authoritatively recognize such a right, Mr. Justice Brandeis, again speaking for a unanimous Court, reaffirmed the right of the United States to cancel for fraud

or illegality a certificate of naturalization previously granted. *Tutun* v. *United States*, 270 U. S. 568, 576, 578, 580.

What petitioner's argument therefore comes to is that, since the naturalization court was unable to discover that petitioner did not, when he foreswore allegiance to the German Reich and took the oath of allegiance to the United States, intend in good faith either to renounce his prior allegiance or to pledge an unconditional fealty to the country of his adoption, there is now no constitutional method by which the United States can strip him of the fruits of his fraud. Otherwise stated, the contention is that fraud, once it has been successfully perpetrated, forever estops the defrauded party.

III

THE EVIDENCE LIKEWISE ESTABLISHES BEYOND A TROUBLING DOUBT THAT PETITIONER'S REPRESENTATION AT THE TIME OF HIS NATURALIZATION THAT HE WAS ATTACHED TO THE PRINCIPLES OF THE CONSTITUTION OF THE UNITED STATES WAS CONSCIOUSLY AND DELIBERATELY FALSE; AND THIS IS AN ADDITIONAL GROUND FOR CANCELLING HIS CERTIFICATE OF NATURALIZATION

Apart from the falsity of petitioner's oath of allegiance, which, as we have shown, requires affirmance of the judgment below, cancellation of petitioner's certificate of naturalization was justified on the additional ground that the represen-

tation in his petition for naturalization, that he was attached to the principles of the Constitution of the United States, was consciously and deliberately false.

For more than a hundred and fifty years, ever since 1795, the naturalization laws have required, as a condition of obtaining American citizenship, that the alien applicant be attached to the principles of the Constitution of the United States. Sec. 1, *Thirdly,* and sec. 2 of the Act of January 29, 1795, c. 20, 1 Stat. 414, 414–415; sec. 1, *Thirdly* and *Fourthly,* of the Act of April 14, 1802, c. 28, 2 Stat. 153, 154; R. S. 2165, *Third* and *Fifth;* sec. 4, *Fourth,* of the Act of June 29, 1906, c. 3592, 34 Stat. 596, 598; sec. 332 (a) (17) of the Act of October 14, 1940, c. 876, 54 Stat. 1137, 1155 (8 U. S. C. 732 (a) (17)).

Just what those principles are, just what minimum of belief must be shown to entitle the alien to American citizenship, we shall discuss in a moment. At this point, by way of preliminary to the subsequent discussion, we summarize the principles to which petitioner was in fact attached.

1. The district judge found, as on the evidence in the present record he was compelled to find, that petitioner on the day of his naturalization was in agreement with the principles of the German American Bund (Fdg. 57, R. 41), and that

his attitude with respect to his attachment to the principles of the Constitution of the United States were the same at that time as during the years 1939 through 1941 (Fdg. 59, R. 41). The Bund principles—and they are not questioned by petitioner here—involved the principle of leadership (Fdg. 11, R. 23), the principle of German racial superiority and unity (Fdg. 12, R. 23–24) which emphasized that allegiance and devotion to Hitler and the German *Volkstum* was superior to any obligation to the United States (Fdg. 14, R. 24), and the anti-democratic principle of National Socialism (Fdg. 16, R. 24–25).

Petitioner, as we have already shown, *supra*, pp. 14, 17–18, was a vociferous champion of the Bund (Fdgs. 40, 47, R. 34, 37–38), which he characterized as "the Fuehrer's grip on American democracy" (Fdg. 40, R. 33–34), preached the doctrine of German racial unity (Fdg. 51, R. 38), enrolled his daughter in the Bund Youth Movement in order that she might imbibe its principles at an impressionable age (Fdg. 45, R. 36–37; compare Fdg. 21, R. 26), and, knowing generally of the Bund aims and tenets (Fdgs. 40, 47, R. 33–34, 37–38), signified in striking fashion his acceptance of the leadership principle by sending Hitler, jointly with the Milwaukee Bund leader, a birthday greeting in 1938 which concluded with the words, "In blind obedience we follow you" (Fdg. 56, R. 41).

On these facts the district judge found (Fdg. 61, R. 42):

> Defendant's belief in and adherence to the concepts of National Socialism as practiced by the Nazi Party in Germany and the German-American Bund in the United States, his activities in promoting the establishment of these concepts in the United States, his opposition to the constitutional principle of political and racial equality of all persons under law regardless of race and color, as evidenced by his campaign of race defilement particularly against the Jews, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant Knauer at the time of his filing his petition for naturalization, at the time of his naturalization, and at all times thereafter was not in fact attached to the principles of the Constitution of the United States and did not intend to support the same.

We believe that this finding, which is supported by clear, unequivocal, and convincing evidence, required the conclusion that petitioner's certificate of naturalization was procured "fraudulently and therefore illegally" (R. 43).

2. However, the decision of this Court in *Schneiderman* v. *United States*, 320 U. S. 118, has been thought by some of the lower federal courts to devitalize the statutory requirement of attachment, in consequence of which there are decisions

which virtually eliminate attachment to the principles of the Constitution as a condition of obtaining citizenship.

Thus, in *United States* v. *Rossler*, 144 F. 2d 463 (C. C. A. 2), the Second Circuit said, *per* L. Hand, J., at p. 465,

> That attachment to the principles of the Constitution which the law exacts at naturalization is not addressed to the heart; it demands no affection for, or even approval of, a democratic system of government; but merely an acceptance of the fundamental political habits and attitudes which here prevail, and a willingness to obey the laws which may result from them. Naturalization expresses the alien's voluntary initiation into the new society of his choice; his change of allegiance may be dictated by any purpose, however personal and selfish, so be it it is not inconsistent with a willingness to throw in his lot with that society and make its fate his own. Patriotism is not a condition of naturalization, any more than it is of continued native citizenship.

And in *United States* v. *Korner*, 56 F. Supp. 242 (S. D. Calif.), it was held that there was no basis for cancelling a defendant's certificate of naturalization where it was shown that he was a member of the Bund during the entire five year period prior to his naturalization, because, forsooth, it was not shown that his activities fell afoul of the clear and present danger rule. Attachment

to the principles of the Constitution is thus satisfied, in the view of that court, just so long as the alien does not actually resort to violence, and is content to carry on his effective Fifth Column subversion in non-violent fashion.

These decisions thus cut out of the statute book a requirement which Congress has kept there for more than a century and a half. The basic unsoundness of the result so reached, quite apart from the unwarranted liberties taken with an Act of Congress, lies in the circumstance that the rulings in question analogize the situation of an alien seeking citizenship to that of an alien who for good and sufficient reason comes to our shores without any intention of changing his nationality. These cases require of the applicant for citizenship only that he be law-abiding.

But every alien in the country must obey our laws, and every alien dwelling here owes a temporary allegiance to the United States, so much so that, if he fails in that allegiance and extends aid and comfort to the enemy, he commits an act of treason. *Carlisle* v. *United States,* 16 Wall. 147; *Radich* v. *Hutchins,* 95 U. S. 210; see *The Schooner Exchange,* 7 Cranch 116, 144; *United States* v. *Wong Kim Ark,* 169 U. S. 649, 655, 658, 693–694; compare *Wildenhus's Case,* 120 U. S. 1.

As Secretary of State Webster said in 1851, in language later quoted with approval by this Court

in *Carlisle* v. *United States*, *supra*, 16 Wall. at 155:

> Every foreigner born residing in a country owes to that country allegiance and obedience to its laws so long as he remains in it, as a duty upon him by the mere fact of his residence, and that temporary protection which he enjoys, and is as much bound to obey its laws as native subjects or citizens. This is the universal understanding in all civilized states, and nowhere a more established doctrine than in this country. * * * Independently of a residence with intention to continue such residence; independently of any domiciliation; independently of the taking of any oath of allegiance or of renouncing any former allegiance, it is well known that, by the public law, an alien or a stranger born, for so long a time as he continues within the dominions of a foreign government, owes obedience to the laws of that government, and may be *punished for treason* or other crimes as a native-born subject might be, unless his case is varied by some treaty stipulation.[17]

3. Obviously, attachment to the principles of the Constitution of the United States must mean

[17] The English courts likewise hold that an alien can be guilty of treason. *De Jager* v. *Attorney General of Natal*, [1907] A. C. 326 (Privy Council); *Rex* v. *Joyce*, 90 Sol. J. 2, s. c. *sub nom. Joyce* v. *Director of Public Prosecutions*, 90 Sol. J. 60 (House of Lords).

something more than the allegiance which every alien owes. It must have more content than a mere willingness to abide peacefully within our midst. And, if we go to the debates of the 3rd Congress, where the requirement of attachment was first introduced, we can see that the sponsors of that requirement clearly intended it to have a wider meaning. Those debates, fragmentary in spots though they undoubtedly are, leave no doubt on that vital point.

The Act of 1795 was passed during a period of turmoil, both in Europe and in the New World. The Terror in France was barely over, and the flames of revolution had spread to the island of Haiti. Refugees from both countries flocked to the United States for sanctuary, and fear was expressed in Congress that these immigrants would hold principles not consonant with our ideals. Mr. Sedgwick of Massachusetts gave expression to that fear (4 Annals of Congress 1008):

> The present (Mr. S. said) he believed the most inauspicious time for the indiscriminate admission of aliens to the rights of citizenship. A war, the most cruel and dreadful which had been known for centuries, was now raging in all those countries from which emigrants were to be expected. The most fierce and unrelenting passions were engaged in a conflict, which shook to their foundations all the ancient political structures in Europe. This con-

test was supported on the one hand by men who believed personal political distinctions were necessary to the great purpose of security, and on the other by those who thought that society could be protected and individuals secured by a Government with departments, and without checks; either embracing the principles established here, where, without privileged orders distinct portions of power were to be deposited in different hands, in such manner that it was almost impossible for the mind even to conceive that the different departments should form an union for any mischievous purpose; and altogether impossible to believe that without such concurrence either alone should be capable of executing any wicked design.

Could (he asked) any reasonable man believe, that men who, actuated by such passions, had fought on grounds so opposite, almost equally distant from the happy mean we had chosen, would here mingle in social affections with each other, or with us? That their passions and prejudices would subside as soon as they should set foot in America? or, that, possessing those passions and prejudices, they were qualified to make or to be made the governors of Americans?

Mr. Giles of Virginia therefore proposed an amendment, that an alien be required to be "attached to a Republican form of Government"

in order "to prevent those poisonous communications from Europe, of which gentlemen were so much afraid;" 4 Annals of Congress 1021. The proposal was amended to substitute "attached to the Constitution of the United States" since the term "Republican" was equivocal and a title "assumed by many Governments in Europe, which were upon principles entirely different from ours." Some which were said to have assumed the title of "Republican" had been "Aristocracies of the most hideous form," while "Many call themselves Republican, who, by this word, mean, pulling down every establishment: they were mere Anarchists." *Id.*, pp. 1021–1022.

The debate continued (4 Annals of Congress, 1022–1023):

> Mr. GILES felt himself extremely surprised to hear it asserted on the floor of Congress, that the words "Republican form of Government" meant anything or nothing. He read a passage from the Constitution, whereby a Republican form of Government is guarantied to each of the United States composing the Union. He should, therefore, have imagined, that the words were well understood from one end of the Continent to the other. He did not expect such criticism. He was not sure if he should vote for the clause at all; but if he did so, he should wish the best to be made of it. He then altered his amendment to these words: "attached to the prin-

ciples of the Government of the United States."

Mr. DAYTON. With all the ambition of that gentleman [Mr. Giles] to be called a Democrat, both he and Mr. D. would more properly be called Republicans. He again vindicated his assertion as to the equivocal meaning of the word. A Venetian or Genoese might come to this country, and take the oath as proposed, and then excuse himself by saying, "it was the Republican form of my own country which I had in view." One of the best writers on the British Constitution had called that also a Republic.

Mr. MADISON was of opinion that the word was well enough understood to signify a free Representative Government, deriving its authority from the people, and calculated for their benefit; and thus far the amendment of his colleague was sufficiently proper. Mr. M. doubted whether he himself should, however, vote for the clause, thus amended. It would perhaps be very difficult for many citizens to find two reputable witnesses, who could swear to the purity of their principles for three years back. Many useful and virtuous members of the community may be thrown into the greatest difficulties, by such a procedure. In three years time a person may have shifted his residence from one end of the Continent to the other. How then was he to find evidence of his behaviour

> during such a length of time? But he objected to both amendments on a different ground. It was hard to make a man swear that he preferred the Constitution of the United States, or to give any general opinion, because he may, in his own private judgment, think Monarchy or Aristocracy better, and yet be honestly determined to support this Government as he finds it.

When, therefore, Congress passed the amendment over Madison's objections (4 Annals of Congress 1023), it rejected mere determination to "support this Government as he finds it" while reserving "private judgment" that some other system is better. There is therefore no support for the view of L. Hand, J., *supra*, p. 75, that the "attachment to the principles of the Constitution which the law exacts at naturalization * * * demands no affection for, or even approval of, a democratic system of government." To the contrary, it is clear that from the time of the first naturalization law,[18] Congress intended that "attachment to the Constitution"

[18] The First Naturalization Act of March 26, 1790, c. 3, 1 Stat. 103, required only an oath to support the Constitution, and a two-year residence in the United States. But the latter requirement was imposed in order, first, that the alien might "have an opportunity of knowing the circumstances of our Government, and in consequence thereof, shall have admitted the truth of the principles we hold. Second, that he shall have acquired a taste for this kind of Government." M. J. Stone, 1 Debates in Congress (O. S.), 1789–1790, p. 1157.

contemplated not only adherence to its formal procedure but also subscription to the basic principles of the form of government erected by that instrument.

Now, what were those "principles we hold"? For a proper answer to that question, we must recall to mind the situation of the men who first insisted on the requirement of attachment. They were dealing not with institutions long established, so familiar as to be axiomatic and accepted without question, but with a new government, an experiment in freedom then unlike any other on earth. They had fashioned this government after a long and discouraging war for independence, and after a long and almost more discouraging period of near chaos which threatened the prize so dearly won. Statesmanlike compromise and conciliation had produced a Constitution, and now, in 1795, the government established under that Constitution was functioning in a war-torn world. Across the seas the legislators of that day beheld monarchies, limited and absolute, and revolutionary republics; while at their very doorstep there lay an autonomous province almost entirely composed of recently liberated slaves. In that setting, surely, the "principles of the Constitution of the United States" must have been regarded by them as having an affirmative meaning.

We submit with deference, despite anything said in *Schneiderman* v. *United States*, 320 U. S.

118, that this expression had more substantive content than an attachment to the principle of free speech and to the principle of orderly amendment. Article V and the amending procedure which it prescribes are not a universal solvent which drains of substance every other Article and every Amendment other than the First. Many of the members of the 3d Congress had been members of the Constitutional Convention. Many of them were veterans of the Revolutionary War. Surely, to them, the "principles of the Constitution" meant more than merely a vehicle for orderly change. They had builded a nation, on principles foreign to most of the then civilized world. It simply cannot be believed that, when they insisted that aliens seeking admission into their political fellowship be attached to those principles, they would have been satisfied with a mere promise of lawful conduct. The debates are to the contrary, and, we submit, the overwhelming evidence of historical fact is likewise to the contrary.[19]

4. What, then, were those basic principles, and which of them have validity today? We believe that, certainly for purposes of this case, the minimal principles of the Constitution to which the alien must be attached as a prerequisite to acquiring American citizenship are these:

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[19] Could it fairly be urged that an alien is attached to the principles of the Constitution if he states that, immediately upon naturalization, he intends to press for a constitutional amendment to repeal Amendments I–X, and XIII–XV?

(a) The principle of a Republican Form of Government—"and the distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves." *In re Duncan*, 139 U. S. 449, 461. And, as we point out below, pp. 105–109, the guarantee to every State of a Republican Form of Government, Article IV, Section 4, was intended to mean that no state should be permitted to have a monarchial or anti-Republican form of government even if it wanted one.

(b) The principle of Federalism—"an indestructible Union, composed of indestructible States." *Texas* v. *White*, 7 Wall. 700, 725. We believe Federalism to be a fundamental principle of the Constitution, not only because of the prohibition in Article V against any amendment which should deprive a State of its equal suffrage in the Senate, but primarily because the federal adjustment—"The Great Compromise"[20]—was the major problem in the Convention. When that was solved, the other adjustments were readily made.

(c) The principle of a Bill of Rights, delimiting for the protection of individuals and of minori-

[20] See Farrand, *The Framing of the Constitution* (1913) c. VII; Charles Warren, *The Making of the Constitution* (1937 ed.) pt. Two, c. V.

ties areas into which government may not enter. Since this goes beyond the first ten Amendments, it is probably better expressed as the principle of constitutional protection of civil rights and of life, liberty and property.

(d) The principle of a peaceful process of amendment for effecting changes in the organization of the Government.

These, we submit, are the fundamental but minimal principles of our Constitution. An attempt to state them in more detail would involve recital of provisions rather than principles; any effort to collect them with less particularity would, we feel, eliminate distinctive essentials of our form of government and leave only amorphous generalities couched in terms of orderly liberty.[21]

5. Testing petitioner's views against these minimal standards, it is clear, by unequivocal and convincing testimony, beyond a single troubling doubt, that petitioner was never attached to the principles of the Constitution of the United States at any time material to the present proceedings.

He was attached to the principle of leadership, the *Fuehrerprinzip,* as distinguished from the principle of a republican form of government; he was attached to the principle of the racial superiority of the German people (and the inferior-

[21] After searching reflection, we are compelled to reconsider the minimum requirements advanced by the Government in the *Schneiderman* case, 320 U. S. 118, 140, note 20.

ity of all other peoples), as distinguished from the principle of equality of all Americans which is guaranteed by the Fourteenth Amendment and analogous constitutional provisions, and he was attached to the principle of intolerance and the denial of civil liberties, as distinguished from our principle of the constitutional guarantee of such liberties. The evidence has been set out above *in extenso*, *supra*, pp. 4–22; there is no need to repeat it here. Suffice it to say that petitioner was attached to the principles of German National Socialism, principles diametrically opposed to those of the Constitution of the United States. Petitioner was a good Nazi. He could not at the same time be a good American. The differences are irreconcilable.

6. We are not required, in the present case, to consider the questions suggested in *Schneiderman* v. *United States*, 320 U. S. 118, as to whether the requirement that the alien be attached to the principles of the Constitution of the United States lays down an objective or subjective test, or whether, in a suit brought to cancel a certificate of naturalization for lack of attachment, the finding by the naturalization judge that there was an attachment is in and of itself a sufficient compliance with the statute.

(a) Section 4 of the Naturalization Act of 1906 (*infra*, pp. 114–115), which was before this Court

in the *Schneiderman* case, provided in pertinent part that—

> It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least * * * and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States * * *.

The above provision was amended by the Act of March 2, 1929 (*infra*, p. 115) to read as follows:

> No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years * * * and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States * * *.

Petitioner was naturalized under the latter provision. Consequently, at the time of his naturalization, the statutory language made it clear that for admission to citizenship there were requisite certain specified conditions, in fact, and that those conditions were not met merely because the naturalization judge was satisfied, contrary to the fact, that they existed. Such vestige of support as the language of the 1906 Act gave to the con-

tention, that an alien could become a citizen simply by satisfying a court that certain allegations were true regardless of their actual lack of factual basis, has been withdrawn by the 1929 amendment.

(b) Nor is there, on the facts of the present case, any room for speculation whether "behaved as a person * * * attached to the principles of the Constitution" involves simply circumspect outward behavior regardless of inner conviction, or whether that requirement demands a particular state of mind. For petitioner here can not meet even the test of outward behavior. His conduct during the three years immediately prior to his naturalization, from 1934 to 1937, when he bitterly opposed the circulation of any matter critical of Nazi Germany (Fdg. 33, R. 31), when he was active in the campaign to introduce the swastika symbol of National Socialism into the activities of the Federation of German-American Societies (Fdgs. 34–36, R. 31–32), and when he enrolled his daughter in the Bund's Youth Movement (Fdg. 42, R. 35; see Fdg. 21, R. 26), shows conclusively and without contradiction that his behavior was not that of a man attached to the principles of the Constitution of the United States.

Consequently, the representation in his petition for naturalization (Ex. PK 1; Tr. 22), that he was so attached, was knowingly and consciously false,

and warranted cancellation for fraud of the certificate of naturalization procured on the strength thereof. There is no need to repeat at this juncture the authorities marshalled above, *supra*, pp. 60–71. Having regard to the scheme and development of the naturalization laws, attachment to the principles of the Constitution is among the most important requirements imposed. Transfer of allegiance is essential, true enough: but, as we have seen, *supra*, pp. 76–77, even the alien sojourning here owes a temporary allegiance. The alien who seeks citizenship must show an attachment to our principles as well.

IV

THE NORMAL EQUALITY OF TREATMENT ACCORDED NATURALIZED AND NATIVE-BORN CITIZENS DOES NOT PREVENT CONGRESS FROM CONDITIONING THE GRANT OF NATURALIZATION, NOR FROM CANCELLING ANY CERTIFICATE OF NATURALIZATION OBTAINED IN DISREGARD OF THE PRESCRIBED CONDITIONS

Petitioner argues (Pet. Br. 30–31) that "Once a person with the jurisdictional qualifications is admitted to citizenship, he is as a drop of water in the ocean, or a part of the blue in the sky and loses his alien character. He wears no stigmatizing letter, no identifying apparel, no leading strings, nor straight jacket, as Mr. Justice Murphy terms it. He belongs, and is free to say and do in the American way. He may traduce and denounce or praise and glorify; he may point with pride and

view with alarm; he may organize, lead or follow as is the result of liberty of speech and action. He is a citizen."

Within limitations, we may concede the soundness of the foregoing. But the normal equality of treatment accorded naturalized and native-born citizens does not prevent Congress from attaching conditions to the grant of citizenship by naturalization, conditions which are not requisite to the acquisition of citizenship by birth, nor does it preclude Congress from providing for the cancellation of any certificate of naturalization which was obtained in disregard of the prescribed conditions.

1. Just as the laws of the United States generally favor the individual entering the United States by birth and thus becoming a citizen thereof over the alien who seeks to enter the United States as an immigrant, and likewise favor the citizen over the alien who, once admitted, seeks to remain in the United States, so also is a discrimination apparent when the grant of citizenship by naturalization is compared with the grant of citizenship by birth. For persons born in the United States, citizenship is acquired by birth, regardless of race. Amendment XIV, Section 1; *United States* v. *Wong Kim Ark*, 169 U. S. 649; *Morrison* v. *California*, 291 U. S. 82, 85; cf. Amendment XV. But we deny the privilege of citizenship by naturalization to high-caste Hindus, *United States* v.

Thind, 261 U. S. 204, and to Japanese, *Ozawa* v. *United States,* 260 U. S. 178; *Yamashita* v. *Hinkle,* 260 U. S. 199; *Toyota* v. *United States;* 268 U. S. 402, while the right of Filipinos to become American citizens turns on whether or not they have served in the armed forces of the United States in enumerated wars. 8 U. S. C., Supp. IV, 703.

When, therefore, a person outside the racial categories eligible for naturalization has been naturalized, his certificate of naturalization is thereafter subject to cancellation by suit, *United States* v. *Thind,* 261 U. S. 204; *Toyota* v. *United States,* 268 U. S. 402, or it may be disregarded as a nullity. *Yamashita* v. *Hinkle,* 260 U. S. 199. But the citizenship of the Japanese born in the United States cannot be thus disregarded. *Regan* v. *King,* 49 F. Supp. 222 (N. D. Calif.), affirmed. 134 F. 2d 413 (C. C. A. 9), certiorari denied, 319 U. S. 753.

2. Similarly, the adult alien who seeks citizenship must speak English, 8 U. S. C. 704, though the native-born citizen need not do so as a condition of retaining his birthright. Indians are citizens and have been since 1924 (Act of June 2, 1924, c. 233, 43 Stat. 253), yet many of them speak only their tribal tongue, and the Constitution of New Mexico, when that State was admitted in 1912, provided that all laws should be published in Spanish as well as in English, for the first twenty years of statehood. N. M. Const., Art. 20, Sec. 12; see N. M. Laws 1931, c. 113; compare Sec. 3

of the Joint Resolution of August 21, 1911, 37 Stat. 39, 40, 41, prescribing Sections 1 and 4 of Art. XIX of the New Mexico Constitution.

In like manner, and this is of the essence in the present case, while the alien since 1795 has been required to be attached to the principles of the Constitution as a prerequisite to obtaining citizenship, *supra*, p. 72, the native-born citizen is not required to prove such attachment as a condition to retaining citizenship.

3. Even when the alien has been duly naturalized, he is still not on a complete parity with the native-born citizen. He can never be President. Article II, Section 1, Clause 5. He must wait seven years before he is eligible to be a Representative in Congress, Article I, Section 2, Clause 2, and nine years before he can be a Senator. Article 1, Section 3, Clause 3.[22] And in view of the law as to expatriation, it is clear that he has not the same freedom as the native-born citizen to change his residence.

The provision that a naturalized American citizen, returning to the land of his birth and remaining there for a stated period *animus manendi*, thereby expatriates himself, is first found in the

[22] The oft-repeated dictum from *Luria* v. *United States*, 231 U. S. 9, 22, that "Under our Constitution, a naturalized citizen stands on an equal footing with the native citizen in all respects, save that of eligibility to the Presidency," overlooks the two constitutional provisions last cited.

so-called Bancroft treaties.[23] Thereafter it was made universally applicable to naturalized citizens returning to all countries of origin. Section 2 of the Act of March 2, 1907, 34 Stat. 1228. But there was only a presumption of expatriation; "it is a matter of option and intention." *United States* v. *Gay*, 264 U. S. 353, 358. In the face of the Government's obligation to accord to naturalized citizens abroad the same protection that it extends to native-born citizens, R. S. 2000; 8 U. S. C. 903a, the presumption rule broke down in practice. See Codification of the Nationality Laws of the United States, part 1, pp. 69–76, notes under draft Sec. 402; Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess., on H. R. 6127, superseded by H. R. 9980, pp. 493–501. Accordingly, the Nationality Act of 1940 prescribes that, subject to stated exceptions, the naturalized citizen loses his American nationality entirely by residing abroad for a period varying from two

[23] Art. IV of the Treaty of February 22, 1868, with the King of Prussia in the name of the North German Confederation, 15 Stat. 615, 616; Art. IV of the Treaty of May 26, 1868, with Bavaria, 15 Stat. 661, 662 (but see Art. III of the Protocol, 15 Stat. at 664–666); Art. IV of the Treaty of July 27, 1868, with Wurttemberg, 16 Stat. 735, 736; Art. IV of the Treaty of August 1, 1868, with Hesse, 16 Stat. 743, 745. See also Art. III of the Treaty of January 22, 1873, with Denmark, 17 Stat. 941, 942–943. Compare Art. III of the Treaty of May 13, 1870, with Great Britain, 16 Stat. 775, 776.

to five years. Sections 404–406; 8 U. S. C. 804–806. The native-born citizen is not under the same restraint, and, subject only to a presumption of expatriation in two instances—Sections 402, 401 (c), (d); 8 U. S. C. 802, 801 (c), (d)—can wander about the globe at will and settle down anywhere, for any length of time, without danger of losing his citizenship. The constitutionality of these provisions has never been questioned. See *Perkins* v. *Elg*, 307 U. S. 325, 329. And this Court has unanimously sustained the cancellation of a certificate of naturalization where the naturalized citizen took up his residence abroad immediately after he became a citizen. *Luria* v. *United States*, 231 U. S. 9.

The true basis for sustaining the cancellation, we submit, is the circumstance that citizenship is made available to aliens on condition that they reside permanently in the United States. Section 4, Subdivision Second, Act of June 29, 1906, c. 3592, 34 Stat. 596, 597; Sections 331 (15) and 332 (a) (18) of the Nationality Act of 1940, 8 U. S. C. 731 (15) and 732 (a) (15). If they refuse to comply with that condition, for any reasons that fall outside the exceptions in the expatriation statutes, then the citizenship extended to them on those conditions is withdrawn. They are free to migrate as they wish, or to avail themselves through naturalization elsewhere of

their inherent right of expatriation. R. S. 1999; 8 U. S. C. 800. They are not subject to any species of statutory *ne exeat*. But if they choose to reside permanently elsewhere, and violate the condition on which they were given their citizenship, they cannot be heard to complain when the gift is withdrawn in consequence.

4. The same principles apply to the beliefs which Congress requires that aliens hold as a prerequisite to admission into the country, to continued residence in the country, and to naturalization. Thus, persons who believe in the practice of polygamy, 8 U. S. C. 136 (f), and persons who oppose organized government or advocate the violent overthrow of government, 8 U. S. C. 137, are excluded from entry into the United States, and, if admitted, are thereafter subject to deportation. 8 U. S. C. 154, 155a; see *Turner* v. *Williams*, 194 U. S. 279. Anarchists and advocates of the forcible overthrow of government are ineligible for citizenship. 8 U. S. C. 705.[24] But native-born polygamists and anarchists are not subject to expulsion, nor do they risk loss of their nationality by acts falling short of actual attempts by force

[24] Believers in polygamy formerly were. Section 7 of the Act of June 29, 1906, c. 3592, 34 Stat. 596, 598, 8 U. S. C. (1934 ed.) 364. We have not examined the legislative history of the Nationality Act of 1940 to ascertain the reason why this restriction was dropped, or why the statement of a petitioner's disbelief in polygamy is no longer required by statute in the petition for naturalization.

to overthrow the United States, 8 U. S. C. 801 (h).

We do not deny entry to the United States to otherwise qualified aliens simply because they believe in a monarchical form of government or in the principle that a nation's rulers are better selected through the accident of birth than through the tumult of popular elections. Nor did we prior to December 11, 1941, exclude aliens who believed in the tenets of National Socialism, or who felt that fascism was the wave of the future which would sweep all before it. And, subject to the clear and present danger test, such alien fascists and alien monarchists were free to think their thoughts and to speak them freely. Just so long as they did not actually incite to violence, they were within the protection of the First Amendment.

But by the very profession of their beliefs, they showed themselves attached to principles which were and are opposed to the principles of the Constitution of the United States. Not being attached to the latter set of principles, they were not and are not eligible for citizenship.

It is essential, we submit, to distinguish between, on the one hand, the constitutional freedom of expression, which is limited only by the clear and present danger test, and which applies to citizens and aliens alike, and on the other, the

undoubted right of Congress to insist that aliens may be admitted into our political fellowship only when they are attached to those fundamental principles which constitute the common understanding which is an essential prerequisite to the proper functioning of a free society.

We believe it apposite to recall here some words of Lord Balfour which were quoted by Mr. Justice (then Mr. Attorney General) Jackson, on the occasion of this Court's one hundred and-fiftieth anniversary (309 U. S. at viii):

> Our alternating Cabinets, though belonging to different parties, have never differed about the foundation of society, and it is evident that our whole political machinery presupposes a people so fundamentally at one that they can afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict. May it always be so.

It is precisely in order that we may remain a people fundamentally at one that Congress has insisted, for over a century and a half, that the alien seeking citizenship be attached to the principles of our Constitution. He is free to disagree with those principles as an alien; he is free to carry on his business and to be secure in his liberty and property as an alien; in the past, at least, he might even vote despite his

alienage;[25] he is free, provided he does not incite to violence, to write and speak in favor of principles other than those of our Constitution if he thinks those other principles preferable; but if he seeks to enter our political fellowship, our bond of citizenship, then he must be at one with us in our common understanding. He is not being denied freedom because Congress insists that he share certain beliefs as a condition of acquiring American citizenship, or because the native-born citizen need not share those same beliefs as a condition to retaining American citizenship.

5. When, therefore, conduct immediately subsequent[26] to naturalization is examined with a view to ascertaining compliance or non-compliance with the condition, the naturalized citizen is not being put into a strait jacket. The inquiry is simply whether he has honestly acquired his citizenship.

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[25] *Minor* v. *Happersett*, 21 Wall. 162, 177; *Boyd* v. *Thayer*, 143 U. S. 135, 168, 175; *Lanz* v. *Randall*, 4 Dill. 425, Fed. Case No. 8080 (C. C. D. Minn.). *Per contra*, prior to the XIX Amendment, women had no federal right to vote even though they were citizens. *Minor* v. *Happersett*, *supra*.

[26] We say, "immediately subsequent", because if the alien was attached to our principles at the time of naturalization, he is free to change his mind thereafter. But the shorter the interval between the date of naturalization and the date of the change of heart, the more convincing the evidence that there was no change at all. Compare pp. 42–45, *supra*; compare the facts in *Baumgartner* v. *United States*, 322 U. S. 665. In the present case, as we have demonstrated in some detail, petitioner was never at any time attached to our principles.

As we have pointed out, *supra*, pp. 93–95, the alien obtains his citizenship on condition that he reside here permanently, that he cast in his lot with ours. If he resides elsewhere, he loses his citizenship by operation of law or, as in *Luria* v. *United States*, 231 U. S. 9, by cancellation of his certificate of naturalization. And it is no answer to say that a person born in the United States could, without jeopardizing his nationality, reside all his life outside the country.

The Act of March 27, 1942, c. 199, sec. 1001, 56 Stat. 176, 182, which added Title III to the Nationality Act of 1940, 8 U. S. C., Supp. IV, 1001–1005, provided a more expeditious naturalization procedure for persons who had served or were serving in the armed forces of the United States during the present war. Section 704 of Title III (8 U. S. C., Supp. IV, 1004) provided "That citizenship granted pursuant to this title may be revoked as to any person subsequently dishonorably discharged from the military or naval forces in accordance with Section 338 of this Act" (*infra*, pp. 113–114). That is to say, citizenship with many procedural requirements waived was made available to aliens serving in our forces, but on condition that their further service be honorable. If an alien so naturalized were subsequently tried and convicted of, for example, misbehavior before the enemy in violation of the 75th Article of War (10 U. S. C. 1547), and were sentenced to a dishonorable discharge, after which

proceedings to cancel his certificate of naturalization were begun, we submit that he could not successfully interpose the defense that the statute was invalid because a native-born soldier similarly convicted and dishonorably discharged would not thereby forfeit citizenship. Compare 8 U. S. C. 801 (g), (h). For the grant of citizenship under Title III was conditioned on subsequent honorable service.

The same situation applies here. The native-born citizen, by and large, is attached to the principles of the Constitution of the United States. But even if he is not, even if he campaigns in orderly fashion for monarchy or some other anti-republican form of government, he does not forfeit the citizenship which is his birthright. The naturalized citizen, on the other hand, obtains his citizenship only on condition that he has behaved as a man attached to the principles of the Constitution. He makes, under oath, a written representation that he is so attached. 8 U. S. C. 732 (a) (17). When, therefore, on the day following his naturalization, the naturalized citizen embarks on a peaceful campaign for an American monarchy untrammelled by the restrictions of any Bill of Rights, it is strong and convincing evidence American Constitution on the day he was admitted to citizenship, and that his representation to the that he was not attached to the principles of the contrary was knowingly false.

It is not a question of denying such a person freedom of speech and thought, or of strapping him into an intellectual strait jacket. It is simply a matter of insisting that, where citizenship is granted on a specified condition, it be not retained by one who has fraudulently represented that the condition was met when in fact, as he well knew, it was not. We do not deny such a person his freedom of speech; we do deny him the fruits of his fraud.

Nor can it fairly be said that, under the facts of the supposed case, there is neither citizenship nor adjudication. As well might it be said that in *Hazel-Atlas Co.* v. *Hartford Co.*, 322 U. S. 238, *there was no patent* for invention, because years later the patent was held subject to cancellation by reason of having been procured by fraud, or that in the same case there had been no adjudication because some twelve years after the first judgment had been entered this Court ordered that it be set aside for fraud. Surely there is no constitutional difference between setting aside for extrinsic fraud a judgment upholding a patent for invention and setting aside for intrinsic fraud a judgment granting a certificate of naturalization. Indeed, so far as injury to the body politic is concerned, there is less harm in an outstanding patent fraudulently obtained than there is in permitting a person opposed to the principles of our Constitution to continue to hide behind the citizenship

which he acquired through his fraudulent representation that he was attached to those principles. Every public interest demands that he be stripped of what he wrongfully obtained, and certainly there is no constitutional compulsion which requires this Court to place a premium on his up-to-now successfully perpetrated fraud.

V

THE PROTECTION ACCORDED FREEDOM OF THOUGHT DOES NOT REQUIRE THE CONSTITUTION TO GUARANTEE ITS OWN SELF-DESTRUCTION

Implicit in the decision of this Court in *Schneiderman* v. *United States*, 320 U. S. 118, is a broad concept of freedom of thought based on the dissenting opinion of Mr. Justice Holmes in *United States* v. *Schwimmer*, 279 U. S. 644, 653–655. The apposite portion of that dissent is the eloquent and frequently quoted sentence.

> * * * if there is any principle of the Constitution that more imperatively calls for attachment than any other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate.

This follows in substance the views earlier expressed by Mr. Justice Holmes in his equally eloquent and equally well-known dissent in *Abrams* v. *United States*, 250 U. S. 616, 624, 630:

> But when men have realized that time has upset many fighting faiths, they may come

> to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution.

The same thoughts are expressed in greater detail in Mr. Justice Brandeis' concurring opinion in *Whitney* v. *California,* 274 U. S. 357, 372–378.

Sentences in judicial opinions torn from their factual context, however brilliantly they may be phrased, seldom encompass a whole complex concept, particularly where, as in the cases referred to, the concept involved is both broad and amorphous. "Freedom for the thought that we hate" is a quotable phrase, but that it does not accurately represent the full constitutional views even of its author becomes abundantly clear when one recalls that it was also Mr. Justice Holmes who spoke for a unanimous Court in *Schenck* v. *United States, Frohwerk* v. *United States,* and *Debs* v. *United States,* 249 U. S. 47, 204, 211. Obviously, "freedom for the thought that we hate" had qualifications, even for judges who eloquently contended for lesser limitations than the majority of this Court thought proper.

Moreover, the Constitution itself provides limitations on the concept of "freedom for the thought that we hate." The Founders took care that for at least one hated thought there should never be freedom, and, far from establishing a forum for ideas in which it might emerge victorious, ordained that this particular thought should never triumph, even peacefully and through the force of reason alone.

For the Constitution provides in Section 4 of Article IV that "The United States shall guarantee to every State in this Union a Republican Form of Government."

A similar provision had been included as the 11th resolve of the Virginia Plan presented to the Convention by Governor Edmund Randolph of that State.[27] When that item was taken up for discussion on June 11, 1787,

> Mr. Madison moved an amendment, to add to or alter the resolution as follows: *The republican constitutions and the existing laws of each state, to be guaranteed by the United States.*[28]
>
> Mr. Randolph was for the present amendment, because a republican govern-

[27] 1 Farrand, *Records of the Federal Convention* (1911) 22; Farrand, *The Framing of the Constitution* (1913) 68, 228. The development of this provision is conveniently traced in Charles Warren, *The Making of the Constitution* (1937 ed.) 601–604.

[28] Italics in original.

ment must be the basis of our national union; and no state in it ought to have it in their power to change its government into a monarchy.—Agreed to. (1 Farrand, *Records of the Federal Convention,* 206)

When the problem was next presented to the Convention, on July 18, 1787, the guarantee appeared as the 16th Resolution. The debates, while more discursive, still show that the members were unwilling to permit any state to establish a monarchial form of government (2 Farrand, *Records of the Federal Convention,* 47–49):

Resol. 16. "That a Republican Constitution & its existing laws ought to be guaranteid to each State by the U. States."

* * * * *

Mr. Ghorum[29] thought it strange that a Rebellion should be known to exist in the Empire, and the Genl. Govt. shd. be restrained from interposing to subdue it. At this rate an enterprising Citizen might erect the standard of Monarchy in a particular State, might gather together partizans from all quarters, might extend his views from State to State, and threaten to establish a tyranny over the whole & the Genl. Govt. be compelled to remain an inactive witness of its own destruction. With regard to different parties in a State; as long as they confine their disputes to words they will be harmless to the Genl. Govt. & to each other. If they appeal to the sword

[29] Nathaniel Gorham of Massachusetts.

it will then be necessary for the Genl. Govt., however difficult it may be to decide on the merits of their contest, to interpose & put an end to it.

Mr. CARROL: Some such provision is essential. Every State ought to wish for it. It has been doubted whether it is a casus federis at present. And no room ought to be left for such a doubt hereafter.

Mr. Randolph moved to add as amendt. to the motion; "and that no State be at liberty to form any other than a Republican Govt." Mr. (Madison) seconded the motion.

Mr. Rutlidge thought it unnecessary to insert any guarantee. No doubt could be entertained but that Congs. had the authority if they had the means to co-operate with any State in subduing a rebellion. It was & would be involved in the nature of the thing.

Mr. Wilson moved as a better expression of the idea, "that a Republican (form of Government. shall) be guarantied to each State & that each State shall be protected agst. foreign & domestic violence.

This seeming to be well received, Mr. (Madison) & Mr. Randolph withdrew their propositions & on the Question for agreeing to Mr. Wilson's motion it passed nem. con.

When the new Constitution had been adopted and was awaiting certification, its provisions were authoritatively expounded by *The Federalist*. In

No. XLIII of that work, the limitation placed on the States by Section 4 of Article IV was clearly explained:

> But who can say what experiments may be produced by the caprice of particular States, by the ambition of enterprising leaders, or by the intrigues and influence of foreign powers? * * * Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican for anti-republican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance.

That is to say, the men who framed our Constitution, after independence had been won and chaos averted, declared a preference, and erected barriers and guarantees lest that preference, the republican form of government, be endangered. They were building a nation which should endure, not a mere marketplace for the interchange of competing political theories. Their guarantee ran to a republican form of government, not simply to a free trade in ideas. Having fought monarchy for long and hard years in the face of terrible odds, they were not quixotic enough to cast away the prize of independence by providing new sanctuaries where that hated institution might conveniently reappear. Indeed, they intended to leave no scope for any anti-republican

form of government, for these men of 1787, though they knew nothing of swastikas, or of blood unity, or of the vile brew that later was labelled fascism, yet were fully aware, good classicists that they were, of the excesses of tyranny in the days of ancient Greece and Rome. And for anti-republican forms of government, whether of kings by divine right or of tyrants by irresistible force, they never intended to provide a foothold. Certainly they did not propose to cancel out every other principle they held by embracing an absolute and unqualified freedom of thought.

But it is urged that Jefferson's writings reflect the very ideas that Mr. Justice Holmes expressed over a century later. See *Schneiderman* v. *United States,* 320 U. S. 118, 137–138, note 15, and materials there cited. Reliance is generally had on one sentence from Jefferson's First Inaugural.

> If there be any among us who would wish to dissolve this Union or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it.

The fact of the matter is, however, that Jefferson is not an entirely safe guide on the issues now under consideration. He was not a member of the Constitutional Convention, being at the time Minister to France, and had no access to its records during his lifetime. His letter to Samuel Kercheval,

written in 1816, in which he deprecates looking at constitutions with sanctimonious reverence,[30] is merely an individual attitude which is hardly representative of the views of those who framed the Constitution in 1789, or of those who in 1795 decided to admit to citizenship only those aliens who were "attached to the principles of the Constitution of the United States," or of those who in later years were called upon to interpret the Constitution.

The course of American history has not followed the Jeffersonian view. For, if Jefferson was right, if those "who would wish to dissolve this Union" should "stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it," then Lincoln was wrong, and the men who fought to preserve the Union were wrong, and we should now be two nations instead of one.

There is no occasion here for attempting to delimit in detail the extent to which Congress may constitutionally qualify "freedom for the thought that we hate." It is enough that the Constitution itself, the decisions of this Court, and the course of American history, make it clear that limits do exist, and that "freedom for the thought that we hate" is not such an immutable absolute that the only other constitutional guarantee remaining

[30] 10 *The Writings of Thomas Jefferson* (Ford's ed.), 37, 42, quoted in *Schneiderman* v. *United States*, 320 U. S. 118, 137, note 15.

is the Constitution's guarantee of its own self-destruction. Freedom of thought does not cancel out everything that makes all the other freedoms possible.

As the present record shows (Con. Tr. 611 *et seq.*), Hitler prior to 1923 "never had any intention of trying to obtain political power in Germany except by means of force, except by violence, by a coup d'etat, or a similar direct action method." It was only after the failure of his 1923 *Putsch* "that he with his advisers decided that the way to do away with democracy in Germany was to use democracy—was to use the democratic rights and privileges with the explicit aim of paralyzing democracy and the democratic procedures * * *." By allowing full "freedom for the thought that we hate," by opening its market places to "the monstrous and debauching power of the organized lie," the Germany of the Weimar Republic effectively signed its own death warrant. Nothing in our Constitution imperatively requires us to follow the German example.

The narrow question here is whether "freedom for the thought that we hate" extends to such a point that an alien who at the time of his naturalization knowingly espouses a philosophy which is contrary to the basic principles of our Constitution, a philosophy which seeks to destroy such freedom as we unquestionably do have, must be admitted to citizenship on making application

therefor after he has lived here for five years and has obeyed our laws. We think the answer to that question is clear, that the Constitution does not require the naturalization of such an alien, and that the statute expressly forbids it. A decree of naturalization obtained by such an alien is therefore voidable, and is subject to cancellation under the statute. That is particularly true where, as here, the grant of citizenship was obtained by means of fraud and was used "as a good thing to hide behind."

Whatever may be the proper scope of freedom of thought, it does not require the granting of citizenship to the enemies of freedom, nor does it grant immunity from fraud to one who takes advantage of American freedom that he may be the better able to destroy it.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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MARCH 1946.

APPENDIX

Sec. 15 of the Act of June 29, 1906, in its amended form, upon the date of the petitioner's naturalization, provided:

> It shall be the duty of the United States district attorneys for the respective districts, or the Commissioner or Deputy Commissioner of Naturalization, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and canceling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. * * * (Act of June 29, 1906, c. 3592, sec. 15, 34 Stat. 601, as amended, 8 U. S. C. (1934 ed.) 405.)

Sec. 338 of the Nationality Act of 1940, c. 876, 54 Stat. 1137, 1158 (8 U. S. C. (1940 ed.) 738) provides:

> (a) It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and canceling

the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured.

Subdivision Third of Sec. 4 of the Act of June 29, 1906, upon the date of the petitioner's naturalization, provided in part:

> He [any alien] shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or a subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 597, 8 U. S. C. (1934 ed.) 381.)

Prior to March 2, 1929, Subdivision Fourth of sec. 4 of the 1906 Act provided in part:

> It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the

applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record. (Act of June 29, 1906, c. 3592, sec. 4, 34 Stat. 598, 8 U. S. C. (1926 ed.) 382.)

Section 6 (b) of the Act of March 2, 1929, c. 536, 45 Stat. 1512, 1513–1514 (8 U. S. C. (1934 ed.) 382), amended the above provision to read as follows:

No alien shall be admitted to citizenship unless (1) immediately preceding the date of his petition the alien has resided continuously within the United States for at least five years and within the county where the petitioner resided at the time of filing his petition for at least six months, (2) he has resided continuously within the United States from the date of his petition up to the time of his admission to citizenship, and (3) during all the periods referred to in this subdivision he has behaved as a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States. At the hearing of the petition, residence in the county where the petitioner resides at the time of filing his petition, and the other qualifications required by this section during such residence, shall be proved by the oral testimony of at least two credible witnesses, citizens of the United States, in addition to the affidavits required by section 379 of this title to be included in the petition.

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rp 16, 17, 18.

SUPREME COURT OF THE UNITED STATES.

No. 510.—October Term, 1945.

Paul Knauer, Petitioner, vs. The United States of America. } On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[June 10, 1946.]

Mr. Justice Douglas delivered the opinion of the Court.

Knauer is a native of Germany. He arrived in this country in 1925 at the age of 30. He had served in the German army during World War I and was decorated. He had studied law and economics in Germany. He settled in Milwaukee, Wisconsin, and conducted an insurance business there. He filed his declaration of intention to become a citizen in 1929 and his petition for naturalization in 1936. He took his oath of allegiance and was admitted to citizenship on April 13, 1937. In 1943 the United States instituted proceedings under § 338 (a) of the Nationality Act of 1940, 54 Stat. 1137, 1158, 8 U. S. C. § 738 (a), to cancel his certificate of naturalization[1] on the ground that it had been secured by fraud in that (1) he had falsely and fraudulently represented in his petition that he was attached to the principles of the Constitution and (2) he had taken a false oath of allegiance. The District Court was satisfied beyond a reasonable doubt that Knauer practiced fraud when he obtained his certificate of naturalization. It found that he had not been and is not attached to the principles of the Constitution and that he took a false oath of allegiance. It accordingly entered an order cancelling his certificate and revoking the order admitting him to citizenship. The Circuit Court of Appeals affirmed. 149 F. 2d 519. The case is here on a petition for a

[1] Sec. 338(a) of the Nationality Act of 1940 provides:

"It shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court specified in subsection (a) of section 301 in the judicial district in which the naturalized citizen may reside at the time of bringing suit, for the purpose of revoking and setting aside the order admitting such person to citizenship and cancelling the certificate of naturalization on the ground of fraud or on the ground that such order and certificate of naturalization were illegally procured."

writ of certiorari which we granted to examine that ruling in light of our decisions in *Schneiderman v. United States*, 320 U. S. 118 and *Baumgartner v. United States*, 322 U. S. 665.

I. In the oath of allegiance which Knauer took he swore that he would "absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly to the German Reich", that he would support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic"; that he would "bear true faith and allegiance to the same" and that he took "this obligation freely without any mental reservation or purpose of evasion."[2] The first and crucial issue in the case is whether Knauer swore falsely and committed a fraud when he promised under oath to forswear allegiance to the German Reich and to transfer his allegiance to this nation. Fraud connotes perjury, falsification, concealment, misrepresentation. When denaturalization is sought on this (*Baumgartner v. United States*, *supra*) as well as on other grounds (*Schneiderman v. United States*, *supra*), the standard of proof required is strict. We do not accept even concurrent findings of two lower courts as conclusive. *Baumgartner v. United States*, *supra*, pp. 670-671. We reexamine the facts to determine whether the United States has carried its burden of proving by "clear, unequivocal, and convincing" evidence, which does not leave "the issue in doubt", that the citizen who is sought to be restored to the status of an alien obtained his naturalization certificate illegally. *Schneiderman v. United States*, *supra*, p. 158.

That strict test is necessary for several reasons. Citizenship obtained through naturalization is not a second-class citizenship. It has been said that citizenship carries with it all of the rights and prerogatives of citizenship obtained by birth in this country "save that of eligibility to the Presidency." *Luria v. United States*, 231 U. S. 9, 22. There are other exceptions of a limited character.[3] But it is plain that citizenship obtained through nat-

[2] Since 1795 an alien seeking admission to citizenship in this country has been required to swear that he renounced allegiance to all foreign powers including his native land. 1 Stat. 103, 414; 2 Stat. 153, 154; R. S. 2165; 34 Stat. 596, 598; 54 Stat. 1137, 1157.

[3] Thus a naturalized citizen must wait seven years before he is eligible to sit in the House (Article I, Section 2) and nine years before he can sit in the Senate. Article I, Section 3. Furthermore, a naturalized citizen may lose his American citizenship by residing abroad for stated periods. Secs. 404-406, Nationality Act of 1940, 54 Stat. 1137, 1170, 8 U. S. C. §§ 804 seq. See Perkins v. Elg, 307 U. S. 325, 329.

uralization carries with it the privilege of full participation in the affairs of our society, including the right to speak freely, to criticize officials and administrators, and to promote changes in our laws including the very Charter of our Government. Great tolerance and caution are necessary lest good faith exercise of the rights of citizenship be turned against the naturalized citizen and be used to deprive him of the cherished status. Unpopular expressions, extreme views, even the promotion of ideas which run counter to our American ideals, are not to be given disloyal connotations in absence of solid, convincing evidence that that is their significance. Any other course would run counter to our traditions and make denaturalization proceedings a handy instrument for political persecutions. As stated in *Schneiderman* v. *United States*, *supra*, p. 159, "Were the law otherwise, valuable rights would rest upon a slender reed, and the security of the status of our naturalized citizens might depend in considerable degree upon the political temper of majority thought and the stresses of the times."

These are extremely serious problems. They involve one of the fundamental principles of our political system designed for the protection of minorities and majorities alike. They also involve tremendously high stakes for the individual. For denaturalization, like deportation, may result in the loss "of all that makes life worth living." *Ng Fung Ho* v. *White*, 259 U. S. 276, 284. Hence, where the fate of a human being is at stake we must not leave the presence of his evil purpose to conjecture. Cf. *Bridges* v. *Wixon*, 326 U. S. 135, 149. Furthermore we are dealing in cases of this kind with questions of intent. Here it is whether Knauer swore falsely on April 13, 1942. Intent is a subjective state, illusory and difficult to establish in absence of voluntary confession. What may appear objectively to be false may still fall short of establishing an intentional misrepresentation which is necessary in order to prove that the oath was perjurious. And as *Baumgartner* v. *United States*, *supra*, indicates, utterances made in years subsequent to the oath are not readily to be charged against the state of mind existing when the oath was administered. 322 U. S. p. 675. Troubled times and the emotions of the hour may elicit expressions of sympathy for old acquaintances and relatives across the waters. "Forswearing past political allegiance without reservation and full assumption of the

obligations of American citizenship are not at all inconsistent with cultural feelings imbedded in childhood and youth." *Baumgartner* v. *United States, supra,* p. 674. Human ties are not easily broken. Old social or cultural loyalties may still exist, though basic allegiance is transferred here. The fundamental question is whether the new citizen still takes his orders from, or owes his allegiance to, a foreign chancellory. Far more is required to establish that fact than a showing that social and cultural ties remain. And even political utterances, which might be some evidence of a false oath if they clustered around the date of naturalization, are more and more unreliable as evidence of the perjurious falsity of the oath the further they are removed from the date of naturalization.

We have read with care the voluminous record in this case. We have considered the evidence which antedates Knauer's naturalization (April 13, 1937), the evidence which clusters around that date, and that which follows it. We have considered Knauer's versions of the various episodes and the versions advanced by the several witnesses for the United States. We have considered the testimony and other evidence offered by each in corroboration or impeachment of the other's case. We have considered the appraisal of the veracity of the witnesses by the judge who saw and heard them and have given it that "due regard" required by the Rules of Civil Procedure. Rule 52(a). We conclude with the District Court and the Circuit Court of Appeals that there is solid, convincing evidence that Knauer before the date of his naturalization, at that time, and subsequently was a thoroughgoing Nazi and a faithful follower of Adolph Hitler. The conclusion is irresistible, therefore, that when he forswore allegiance to the German Reich he swore falsely. The character of the evidence, the veracity of the witnesses against Knauer as determined by the District Court, the corroboration of challenged evidence presented by the government, the consistent pattern of Knauer's conduct before and after naturalization convince us that the two lower courts were correct in their conclusions. The standard of proof, not satisfied in either the *Schneiderman* or *Baumgartner* cases, is therefore plainly met here.

We will review briefly what we, as well as the two lower courts, accept as the true version of the facts.

As early as 1931 Knauer told a newly arrived immigrant who came from the same town in Germany that in his opinion the aim of Hitler and the Nazi party was good, that it would progress.

and that it was necessary to have the same party in this country because of the Jews and the Communists. During the same period he told another friend repeatedly that he was opposed to any republican form of government and that Jewish capital was to blame for Germany's downfall. He visited Germany for about six months in 1934 and while there read Hitler's Mein Kampf. On his return he said with pride that he had met Hitler, and that he had been offered a post with the German government at 600 marks per month; that Hitler was the savior of Germany, that Hitler was solving the unemployment problem while this country was suffering from Jewish capitalism, that the Hitler youth organization was an excellent influence on the children of Germany. On occasions in 1936 and 1937 he was explosive in his criticism of those who protested against the practices and policies of Hitler.

The German Winter Relief Fund was an official agency of the German government for which German consulates solicited money in the United States. In the winter of 1934-1935 Knauer was active in obtaining contributions to the Fund and forwarded the money collected to the German consulate in Chicago.

The German-American Bund had a branch in Milwaukee. Its leader was George Froboese—midwestern gauleiter and later national leader. The Bund taught and advocated the Nazi philosophy—the leadership principle, racial superiority of the Germans, the principle of the totalitarian state, Pan-Germanism and of Lebensraum (living space). It looked forward to the day when the Nazi form of government would supplant our form of government. It emphasized that allegiance and devotion to Hitler were superior to any obligation to the United States.[4] Knauer denied

[4] A number of denaturalization cases in the District Court raised the question as to the nature of the Bund. All of them were consolidated for trial on that single issue, including Knauer's case. At the conclusion of the consolidated trial on that issue, Knauer's case was separately tried. But the findings as to the nature of the Bund were made on the basis of evidence in the consolidated trial. The consolidation of the cases was challenged and upheld in the Circuit Court of Appeals. 149 F. 2d p. 520. No such error is alleged here.

These findings by the District Court as to the nature of the Bund are likewise not challenged here. For similar findings respecting the nature of the Bund see United States *v.* Schuchhardt, 49 F. Supp. 567, 569; United States *v.* Ritzen, 50 F. Supp. 301, 302; United States *v.* Haas, 51 F. Supp. 910, 911; United States *v.* Wolter, 53 F. Supp. 417, 418-425; United States *v.* Sautter, 54 F. Supp. 22; United States *v.* Holtz, 54 F. Supp. 63, 66-70; United States *v.* Baecker, 55 F. Supp. 403, 404-408; United States *v.* Bregler, 55 F. Supp. 837, 839-840; United States *v.* Wilmovski, 56 F. Supp. 63, 64; United States *v.* Claassen, 56 F. Supp. 71, 72.

that he was a member of the Bund. But the District Court found to the contrary[5] on evidence which is solid and convincing.

Knauer participated in Bund meetings in 1936. In the summer of 1936 he and his family had a tent at the Bund camps. In the fall of 1936 he enrolled his young daughter in the Youth Movement of the Bund—a group organized to instill the Nazi ideology in the minds of children of German blood. They wore uniforms, used the Nazi salute, and were taught songs of allegiance to Hitler. Knauer attended meetings of this group.

The Federation of German-American Societies represented numerous affiliated organizations consisting of Americans of German descent and sought to coordinate their work. It was the policy of the Bund to infiltrate older German societies. This effort was made as respects the Federation. Knauer assisted Froboese and others between 1933 and 1936 in endeavoring to have the swastika displayed at celebrations of the Federation. In 1935 Knauer reprimanded a delegate to the Federation for passing out pamphlets opposing the Nazi government in Germany. At a meeting of the Federation in 1935 Knauer moved to have the Federation recognize the swastika as the flag of the German Reich. The motion failed to carry. In 1936 the swastika flag was raised at a German Day celebration without approval of the Federation. A commotion ensued in which Bundists in uniform participated, as a result of which the swastika flag was torn down. At the next meeting of the Federation Knauer proposed a vote indicating approval of the showing of the swastika flag. The motion failed and a vote of censure of the chairman was passed. The chairman resigned. Thereupon Froboese and others proposed the formation of the German-American Citizens Alliance to compete with the Federation. It was organized early in 1937. The constitution and articles of incorporation of the Alliance provided that all of its assets on dissolution were to become the property of a German government agency for the dissemination of propaganda in foreign countries—the Deusches Auslands-Institut. The Alliance was a front organization for the Bund. It was designed to bring into its ranks persons who were sympathetic with the objectives of the Bund but who did not wish to be known as Bund members.

[5] "I find as a fact that the defendant was a member of the Milwaukee unit of the Bund; that he was so considered by its officers and members; that most of his interests and activities were in behalf of the Bund; and that, though completely aware of its aims and purposes, he deliberately vigorously promoted the objects of the Bund."

On February 22, 1937—less than two months before Knauer took his oath of naturalization—he was admitted to membership in the Alliance and became a member of its executive committee. His first action as a member was to volunteer the collection of newspaper articles that attacked the Alliance, Germany, and German-Americans. In 1937 and in the ensuing years Knauer wrote many letters and telegrams to those who criticized the Bund or the German government. In 1938 Knauer was elected vice-president of the Alliance and subsequently presided over most of its meetings. He was the dominant figure in the Alliance. In May 1937 the German consul presented to the Alliance the swastika flag which had been torn down at the Federation celebration the year before. Not long after his naturalization Knauer urged that the Alliance sponsor a sols'ice ceremony, a solemn rite at which a wooden swastika is burned to symbolize the unity of German people everywhere. In August 1937 the Alliance refused to participate in an affair sponsored by a group which would not fly the swastika flag. In May 1938 Knauer at a meeting of the Alliance read a leaflet entitled "America, the Garbage Can of the World". In 1939 he arranged for public showings of films distributed by an official German propaganda agency and depicting the glories of Nazism.[6]

There was an intimate cooperation between the Alliance and the Bund. The Bund camp was used for Alliance affairs and it was available to Alliance members. The Alliance supported various Bund programs. It supported the Youth Group of the

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[6] In 1937 he said to one witness, an American of German ancestry, "Now, isn't that wonderful what Hitler did over there? Don't you like it? When the American Government would take the same line, then it goes in Germany like Hitler did, that will be fine."

Before and after his naturalization he continuously preached the Nazi concept of racial unity among those of German blood. In 1937 he addressed members of the Alliance on the subject of the German volk, saying "With the rise and fall of the German nation, we rise and fall."

In 1940 he said in conversation with another witness, in reply to the witness' remark that he was an American citizen, "I am a German-American." When told that there was no hyphen in the word, he replied, "I lean toward and favor the Germans." When asked if he would fight for America if the Germans invaded this country, he refused to answer, saying, "I am a German-American".

In 1941 the Wisconsin Federation of German-American Societies pledged itself to uphold the Constitution of the United States, to maintain the democratic form of government, and to fight the totalitarian form of government and everything it stood for. Knauer issued an appeal to German-Americans, stating that that declaration constituted open warfare against the then German government and was a plan to create discord among Germans and to induce those in Germany to revolt against the German Reich.

Bund, and the Bund's solstice celebration. In 1939 the Youth Group of the Bund held a benefit performance for the Alliance. In 1940 it admitted the Youth Group of the Bund at the request of Froboese. Knauer consistently defended the Bund when it was criticized, when it was denied the use of a park or a hall, when its members were arrested or charged with offenses. In spite of the fact that Knauer knew the real aims and purposes of the Bund and was aware of its connection and Froboese's connection with the German government, he consistently came to its defense. Thus when a Wisconsin judge freed disturbers of a Bund meeting, he wrote the judge saying that the judge's remarks against the Bund were a "slander of a patriotic American organization." He subscribed to the official Bund newspaper and to a propaganda magazine issued and circulated by an agency of the German government. He held shares in the holding company of the Bund camp which was started in 1939. A photograph taken at the dedication of the new Bund camp in 1939 shows Knauer among a group of prominent Bund leaders with arm upraised in the Nazi salute. He owned a cottage at the Bund camp. He used the Nazi salute at the beginning and end of his speeches and at the Bund meetings.

In May 1938 Knauer and Froboese formed the American Protective League with a secret list of members. Knauer was elected a director. A constitution and by-laws were adopted and copies mailed by Knauer and Froboese to Hitler. One Buerk was a German agent operating in this country and later indicted for failing to register as such. In 1939 the German consulate in Chicago supervised the recruiting of skilled workers in that region for return to Germany for work in German industries. The German consul, Buerk, Froboese and Knauer conducted the recruiting. Knauer participated actively in interviewing candidates. At intervals farewell parties were given by Knauer and Froboese to the returning workers and their families.

Important evidence implicating Knauer in promoting the cause of Hitler in this country was given by a Mrs. Merton. She testified that, prompted solely by patriotic motives, she entered the employ of Froboese in 1938 in order to obtain evidence against the Bund and its members. The truth of her testimony was vigorously denied by Knauer. But the District Court believed her version, as did the Circuit Court of Appeals. And we are persuaded on a close reading of the record not only that her testi-

mony was strongly corroborated but also that Knauer's attempts to discredit her testimony do not ring true.[7]

Her testimony may be summarized as follows: She acted as secretary to Froboese in 1938. During the period of her employ Froboese and Knauer worked closely together on Bund matters. He helped Froboese in the preparation of articles for the Bund newspaper, of speeches, and of Bund correspondence. He helped Froboese prepare resolutions to be offered at the 1938 Bund convention calling for a white-gentile-ruled America. When Froboese left the city to attend the convention he told her to contact Knauer for advice concerning Bund matters. Letters signed by Froboese and Knauer jointly were sent to Hitler and other Nazi officials. One contained a list of 700 German nationals. One was the constitution and by-laws of the American Protective League which we have already mentioned. One to Hess said they had to lay low for awhile, that there was an investigation on. A birthday greeting to Hitler from Froboese and Knauer closed with the phrase, "In blind obedience I follow you." Knauer told her never to reveal that the Alliance and the Bund were linked together. One day she asked Knauer what the Bund was. His reply was that the Bund "was the Fuehrer's grip on American democracy." She reminded Knauer that he was an American citizen. He replied, "That is a good thing to hide behind."

We have given merely the highlights of the evidence. Much corroborative detail could be added. But what we have related presents the gist of the case against Knauer. If isolated parts of the evidence against Knauer were separately considered, they might well carry different inferences. His alertness to rise to the defense of Germans or of Americans of German descent could well reflect, if standing as isolated instances, attempts to protect a minority against what he deemed oppressive practices. Social and cultural ties might be complete and adequate explanations. Even utterances of a political nature which reflected tolerance or approval of the Nazi program in Germany might carry no sinister

[7] The people, whom Mrs. Merton at the time of her work for Froboese told of her mission, corroborated her. One of them on occasion took her to the Froboese home and saw her enter. At the time of the trial Froboese was dead. Mrs. Froboese denied that Mrs. Merton had ever worked for Froboese or that she had ever seen her. The testimony of another witness, however, related a conversation with Mrs. Froboese in which she said that a Mrs. Merton had worked for Froboese. Knauer persistently denied that he ever saw or knew Mrs. Merton. But Mrs. Merton's husband and neighbor identified Knauer as the man who called on Mrs. Merton at her home one day.

connotation, if they were considered by themselves. For many native-borns in this country did not awaken to the full implications of the Nazi program until war came to us. And as we stated in *Schneiderman* v. *United States, supra*, p. 139: "Whatever attitude we may individually hold toward persons and organizations that believe in or advocate extensive changes in our existing order, it should be our desire and concern at all times to uphold the rights of free discussion and free thinking to which we as a people claim primary attachment."

But we have here much more than political utterances, much more than a crusade for the protection of minorities. This record portrays a program of action to further Hitler's cause in this nation—a program of infiltration which conforms to the pattern adopted by the Nazis in country after country. The ties with the German Reich were too intimate, the pattern of conduct too consistent, the overt acts too plain for us to conclude that Knauer was merely exercising his right of free speech either to spread tolerance in this country or to advocate changes here.

Moreover, the case against Knauer is not constructed solely from his activities subsequent to April 13, 1937—the date of his naturalization. The evidence prior to his naturalization, that which clusters around that date, and that which follows in the next few years is completely consistent. It conforms to the same pattern. We do not have to guess whether subsequent to naturalization he had a change of heart and threw himself wholeheartedly into a new cause. We have clear, convincing, and solid evidence that at all relevant times he was a thorough-going Nazi bent on sponsoring Hitler's cause here. And this case, unlike the *Baumgartner* case, is not complicated by the fact that when the alien took his oath Hitler was not in power. On April 13, 1937, Hitler was in full command. The evidence is most convincing that at that time, as well as later, Knauer's loyalty ran to him, not to this country.

The District Court properly ruled that membership in the Bund was not in itself sufficient to prove fraud which would warrant revocation of a decree of naturalization. Otherwise, guilt would rest on implication, contrary to the rule of the *Schneiderman* and *Baumgartner* cases. But we have here much more than that. We have a clear course of conduct, of which membership in the Bund was a manifestation, designed to promote the Nazi cause in this country. This is not a case of an underling caught up in the enthusiasm of a movement, driven by ties of blood and old asso-

ciations to extreme attitudes, and perhaps unaware of the conflict of allegiance implicit in his actions. Knauer is an astute person. He is a leader—the dominating figure in the cause he sponsored, a leading voice in the councils of the Bund, the spokesman in the program for systematic agitation of Nazi views. His activities portray a shrewd, calculating, and vigilant promotion of an alien cause. The conclusion seems to us plain that when Knauer forswore allegiance to Hitler and the German Reich he swore falsely.[8]

II. It is said, however, that the issue of fraud may not be tried in this case. An analogy is sought to be drawn to those cases where relief against a prior judgment, on the ground that perjured testimony was introduced at the trial, was denied. *United States* v. *Throckmorton*, 98 U. S. 61, 66. And see *Toledo Scale Co.* v. *Computing Scale Co.*, 261 U. S. 399, 421. But that rule goes no further than to say that the issue of fraud can become

[8] The following finding of the District Court is a fair conclusion from this record:

"The attachment of the defendant Knauer in the year 1931 to the aims and objects of Hitler's National Socialist movement, his allegiance and attachment to the Third Reich as manifested by his statements and his frequent use of the Nazi salute in public, his devotion to and promotion of the display of the swastika flag and ceremonies using it in symbolic pledge of fidelity to the Reich, his fierce concern over the good name and honor of the German race, his bitter and acrimonious denunciation of everything which interfered with or stood in the way of the fortunes of the German Reich, his belief in and advocacy of the German racial concept of duty and obligation of all Germans to the fatherland regardless of citizenship, his belief in and attachment to the principles and concepts of National Socialism, his espousal of the aims and objects of the German-American Bund and his active participation therein for the promotion of its aims and objects, his promotion and domination of the German-American Citizens' Alliance to further the aims and objects of the Bund, his uninterrupted effort by word and deed to politically activate our German-American people in the interests of the German Reich, his persistent efforts among German-Americans, by means of charitable programs, speeches and movie films, to revive in them a feeling of fidelity and loyalty to the German Reich, the assistance he rendered to the consular representatives of the Reich in the attainment of matters advancing German interests, his fervent devotion and blind attachment to the Fuehrer at a time when the German Reich was hostile to the United States, his lack of affection for or devotion to the United States, his cynical evaluation of his own American citizenship, as well as the evidence in its entirety, can be interpreted only as establishing, and I so find, that the defendant at the time he filed his petition for naturalization did not in good faith intend to renounce absolutely and forever all allegiance and fidelity to the German Reich, and at the time of his naturalization and at all times thereafter the defendant did not in fact renounce and abjure all allegiance and fidelity to the German Reich, but intended to retain and did retain allegiance and fidelity to the German government."

res judicata in the judgment sought to be set aside. We need not consider the extent to which a decree of naturalization may constitute a final determination of issues of fact, the establishment of which Congress has made conditions precedent to naturalization.[9] Those facts relate to the past—to behavior and conduct. But the oath is in a different category. It relates to a state of mind and is a promise of future conduct. It is the final act by which an alien acquires the status of citizen. It requires forswearing of allegiance in good faith and with no mental reservations. The oath being the final step, no evidence is heard at that time. It comes after the matters in issue have been resolved in favor of the applicant for citizenship. Hence, no opportunity exists for the examiner or the judge to determine if what the new citizen swore was true, was in fact false. Hence, the issue of fraud in the oath cannot become *res judicata* in the decree sought to be set aside. For fraud in the oath was not in issue in the proceedings and neither was adjudicated nor could have been adjudicated.

Moreover, when an alien takes the oath with reservations or does not in good faith forswear loyalty and allegiance to the old country, the decree of naturalization is obtained by deceit. The proceeding itself is then founded on fraud. A fraud is perpetrated on the naturalization court. We have recently considered the broad powers of equity to set aside a decree for fraud practiced on the court which granted it. *Hazel-Atlas Co,* v. *Hartford Co.*, 322 U. S. 238. The present suit is an equity suit. *Luria* v. *United States*, *supra*, pp. 27-28. But we need not consider in this case what the historic powers of equity might be in this situa-

[9] At the time of Knauer's naturalization the Act provided:

"It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record."

Act of June 29, 1906, § 4, subdivision Fourth, 34 Stat. 598. That provision was amended by § 6(b) of the Act of March 2, 1929, 45 Stat. 1512, 1513-1514.

tion. For Congress has provided that fraud is a basis for cancellation of certificates of naturalization in proceedings instituted by the United States.[10] The legislative history of that enactment shows that false swearing was one of the evils included in the statutory grounds for denaturalization.[11] That power was granted to give added protection against fraud committed on the naturalization courts. *United States* v. *Ness*, 245 U. S. 319, 324, 327. Cancellation of a certificate on the grounds of fraud includes cancellation for falsely swearing that the applicant forswore allegiance to his native country. Though the making of a false oath be called intrinsic fraud (see *United States* v. *Throckmorton*, *supra*), it is within the reach of the statute.

We have no doubt of the power of Congress to provide for denaturalization on the grounds of fraud. The Constitution grants

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[10] By § 15 of the Act of June 29, 1906, 34 Stat. 601, it was provided:

"That it shall be the duty of the United States district attorneys for the respective districts, upon affidavit showing good cause therefor, to institute proceedings in any court having jurisdiction to naturalize aliens in the judicial district in which the naturalized citizen may reside at the time of bringing the suit, for the purpose of setting aside and cancelling the certificate of citizenship on the ground of fraud or on the ground that such certificate of citizenship was illegally procured. . . . ."

It was held in United States *v.* Ness, 245 U. S. 319, 325, that this statutory power to cancel certificates of naturalization is broader than that afforded in equity, independently of statute, to set aside judgments.

[11] H. Rep. No. 1789, 59th Cong., 1st Sess., p. 2:

"The conditions that have been revealed by special investigations of the frauds committed against the naturalization laws render wholly unnecessary any argument upon the necessity at this time of fully exercising all the authority in naturalization matters conferred by the Constitution upon Congress."

. . . . . .

"The worst and most glaring frauds have consisted in perjury, false impersonation, and the sale and use of false and counterfeit certificates of naturalization."

As stated by a sponsor of the measure on the floor of the House:

"The boon of American citizenship must not be cheapened by lax and unconventional methods of courts and public officers who administer the law, but once granted it should endure for all time. It is conferred by the Federal Constitution and by laws authorized by the Constitution. When citizenship is once legally granted, of course it can not be invalidated, and it ought not to be, but no one questions that it is within the power of the Government to provide for the cancellation of certificates of citizens that have been fraudulently obtained. A certificate tainted with fraud is in the sense of the law no certificate at all." 40 Cong. Rec. p. 7040.

The Court noted in United States *v.* Ness, 245 U. S. 319, 324, that "widespread frauds in naturalization," including "the prevalence of perjured testimony in cases of this character" led to the passage of this legislation.

Congress power "To establish a uniform Rule of Naturalization." Article I, Section 8. The power of denaturalization comes from that provision and the "necessary and proper" Clause in Article I, Section 8. See *Tutun* v. *United States*, 270 U. S. 568, 578. We do not have here a case where, after an alien has been naturalized, Congress provides new grounds which are invoked for cancellation of his certificate. Fraud—the basis of revocation with which we are now concerned—was a statutory ground for denaturalization when Knauer took his oath. Moreover, we are not faced with the question of what limits there may be to conditions for denaturalization which Congress may provide. A certificate obtained by fraud is clearly within the reach of Congressional power. As stated in *Johannessen* v. *United States*, 225 U. S. 227, 241: "An alien has no moral nor constitutional right to retain the privileges of citizenship if, by false evidence or the like, an imposition has been practiced upon the court, without which the certificate of citizenship could not and would not have been issued." And see *Luria* v. *United States*, *supra*, pp. 23-24; *United States* v. *Ness*, *supra*, p. 327. To hold otherwise would be an anomaly. It would in effect mean that where a person through concealment, misrepresentation or deceit perpetrated a fraud on the naturalization court, the United States would be remediless to correct the wrong. That would indeed put a premium on the successful perpetration of frauds against the nation. We cannot conclude that Congress, which may withhold the right of naturalization (*Tutun* v. *United States*, *supra*, p. 578), is so powerless. We adhere to the prior rulings of this Court that Congress may provide for the cancellation of certificates of naturalization on the grounds of fraud in their procurement and thus protect the courts and the nation against practices of aliens who by deceitful methods obtain the cherished status of citizenship here, the better to serve a foreign master.

Since fraud in the oath of allegiance which Knauer took is sufficient to sustain the judgment below, we do not reach the other questions which have been argued.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

Mr. Justice BLACK concurring.

I am satisfied beyond all reasonable doubt, from the testimony and admissions of the petitioner himself, made in open court, that he had never at any time, either before or after his naturalization, deviated from his wholehearted allegiance to, and constant service of, the German Nazi Government.

I realize, as the dissent in this case emphasizes, the dangers inherent in denaturalizations. Had this judgment rested on the petitioner's mere philosophical or political beliefs, expressed or unexpressed, I should not concur in its affirmance. But petitioner's admissions as to his own conduct, leave me in no doubt at all that he was, even in obtaining naturalization, serving the German government with the same fanatical zeal which motivated the saboteurs sent to the United States to wage war. I am unable to say that Congress is without Constitutional power to authorize courts after fair trials like this one, to cancel citizenship obtained by the methods and for the purposes shown by this record.

Mr. Justice RUTLEDGE, dissenting.

For reasons I have suggested elsewhere,[1] but which now are squarely involved, I cannot bring myself to concur in this judgment.

My concern is not for Paul Knauer. The record discloses that he has no conception of, much less attachment to, basic American principles or institutions. He was a thorough-going Nazi, addicted to philosophies altogether hostile to the democratic framework in which we believe and live. Further, he was an active promoter of movements directed to securing acceptance of those ideas here and incorporating them in our institutions. And in this case, by contrast with those of *Schneiderman* and *Baumgartner*,[2] it would be hard to say that the evidence would not sustain a finding that he falsely took the oath of allegiance or that he never in his heart renounced his prime fealty to Adolph Hitler and Nazi Germany. Nor, in my opinion, can it be thought unequal to supporting a conclusion that, from a time prior to his admission to citizenship in 1935 until at any rate the assault on Pearl Harbor, Knauer was in the active service of the Nazi regime.

[1] Schneiderman v. United States, 320 U. S. 118, concurring opinion at 165.
[2] See note 1; Baumgartner v. United States, 322 U. S. 665.

promoting its cause here, and also for a short time in Germany, as the object of his first loyalty.

If therefore in any case a naturalized citizen's right and status can be revoked, by the procedure followed here or perhaps at all, it would be in such a case as this. But if one man's citizenship can thus be taken away, so can that of any other. And even in this case it would be in large part for his political convictions and acts done openly in espousal of them. Not merely Knauer's rights, but those of millions of naturalized citizens in their status and all that it implies of security and freedom, are affected by what is done in this case. By the outcome they are made either second-class citizens or citizens having equal rights and equal security with others.

No native-born American's birthright could be stripped from him for such a cause or by such a procedure as has been followed here. Nor could he be punished with banishment. To suffer that great loss he must forfeit citizenship by some act of treason or felony and be adjudged guilty by processes of law consistent with all the great protections thrown around such trials. Not yet has attempt been made to do this otherwise. Nor in my opinion could it be done, except for some such cause or by any less carefully safeguarded procedure.

In no instance thus far has our system tolerated destruction of that right of the native-born, except by voluntary surrender, on account of convictions held, views expressed, or acts done in promoting their acceptance falling short of treason as defined in the Constitution[3] or conviction for felony. Nor has it thus far brought about that extinction by forms of trial other than those provided for such offenses. Moreover, even in such cases, although the penalty may be death or loss of the rights of citizenship, we have not yet imposed those penalties altogether foreign to our institutions, namely, deportation and exile. For one cause and one only have they been provided, namely, the loss of the naturalized citizen's status.

I do not find warrant in the Constitution for believing that it contemplates two classes of citizens, excepting only for two purposes. One is to provide how citizenship shall be acquired, Const., Art. I, § 8; Art. XIV, § 1, the other to determine eligibility for the presidency. Const., Art. II, § 1. The latter is the

[3] Constitution, Art. III, § 3. See Cramer v. United States, 325 U. S. 1.

only instance in which the charter expressly excludes the naturalized citizen from any right or privilege the native-born possesses.[4] *Luria* v. *United States*, 231 U. S. 9, 22. I do not think there is any other in which his status is, or can be made, inferior.

Congress, it is true, is empowered to lay down the conditions for admission of foreign-born persons to citizenship. In this respect it has wide authority. But it is not unlimited. Nor is Congress given power to take away citizenship once it is conferred, other than for some sufficient act of forfeiture taking place afterward. Naturalized citizens are no more free to become traitors or criminals than others and may be punished as they are when they commit the same offense. But any process which takes away their citizenship for causes or by procedures not applicable to native-born citizens places them in a separate and an inferior class. That dilemma is inescapable, though it is one not heretofore faced squarely. Unless it is the law that there are two classes of citizens, one superior, the other inferior, the status of no citizen can be annulled for causes or by procedures not applicable to all others.

To say that Congress can disregard this fact and create inequalities of status as between native and foreign-born citizens by attaching conditions to their admission, to be applied retroactively after that event, is only to say in other words that Congress by using that method can create different, and inferior, classes of citizens. I have heretofore pointed out why citizens with strings attached to their citizenship, for its revocation, can be neither free nor secure in their status. *Schneiderman* v. *United States*, 320 U. S. 118, concurring opinion at 165. All that is said there, in that respect, applies here or to any procedure by which citizenship may be annulled. In my opinion the power to naturalize is not the power to denaturalize. The act of admission must be taken as final, for any cause which may have existed at that time. Otherwise there cannot but be two classes of citizens, one free and secure except for acts amounting to forfeiture within our tradition; the other, conditional, timorous and insecure because blanketed with the threat that some act or conduct, not amounting to forfeiture for others, will be taken retroactively to show that some prescribed condition had not been fulfilled and be so adjudged. I do not think such a difference was contemplated when Congress was

[4] Cf. Constitution, Art. I, § 2; Art. I, § 3, providing respectively that no person shall be a Senator who shall not have been nine years a citizen and, in the case of Representatives, seven years.

authorized to provide for naturalization and the terms on which it should be granted.

But if I may be wrong in this, certainly so drastic a penalty as denaturalization, with resulting deportation and exile and all the attendant consequences, should not be imposed by any procedure less protective of the citizen's most fundamental right, comprehending all others, than must be employed to take away the native-born citizen's status or the lesser rights of the foreign-born citizen. If strings may be attached to citizenship and pulled retroactively to annul it, at the least this should be done only by those forms of proceeding most fully surrounded with the constitutional securities for trial which are among the prized incidents of citizenship. It is altogether anomalous that those safeguards are thrown about the foreign-born citizen when, for some offense, his liberty even for brief periods is at stake, but are withdrawn from him when all that gives substance to that freedom is put in jeopardy.

The right of citizenship is the most precious of all. The penalty for denaturalization is always harsh. Often it is more drastic than any other. It is also unique for this situation. For the required measure of security, the native-born citizen can be deprived of his status only by the rigidly safeguarded trial for treason or for conviction of a criminal offense which brings loss of rights as a citizen. To these procedures, with the same penalties and for the same causes, the foreign-born citizen is subject; but also by them he is protected. He should not be less secure when it is sought to annul his citizenship than when the effort is to bring about its forfeiture. Nor, in either event, should his procedural safeguards be less than when the same consequence, in substance, is inflicted upon the citizen native born.

The procedure prescribed for and followed in this case was not in accord with those standards. I think nothing less is adequate, or consistent with the constitutional status of citizenship, for the purpose of taking it away.

If this means that some or even many disloyal foreign-born citizens cannot be deported, it is better so than to place so many loyal ones in inferior status. And there are other effective methods for dealing with those who are disloyal, just as there are for such citizens by birth.

Accordingly, I would reverse the judgment.

Mr. Justice MURPHY joins in this ~~opinion~~ dissent.